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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~348.~~ 102

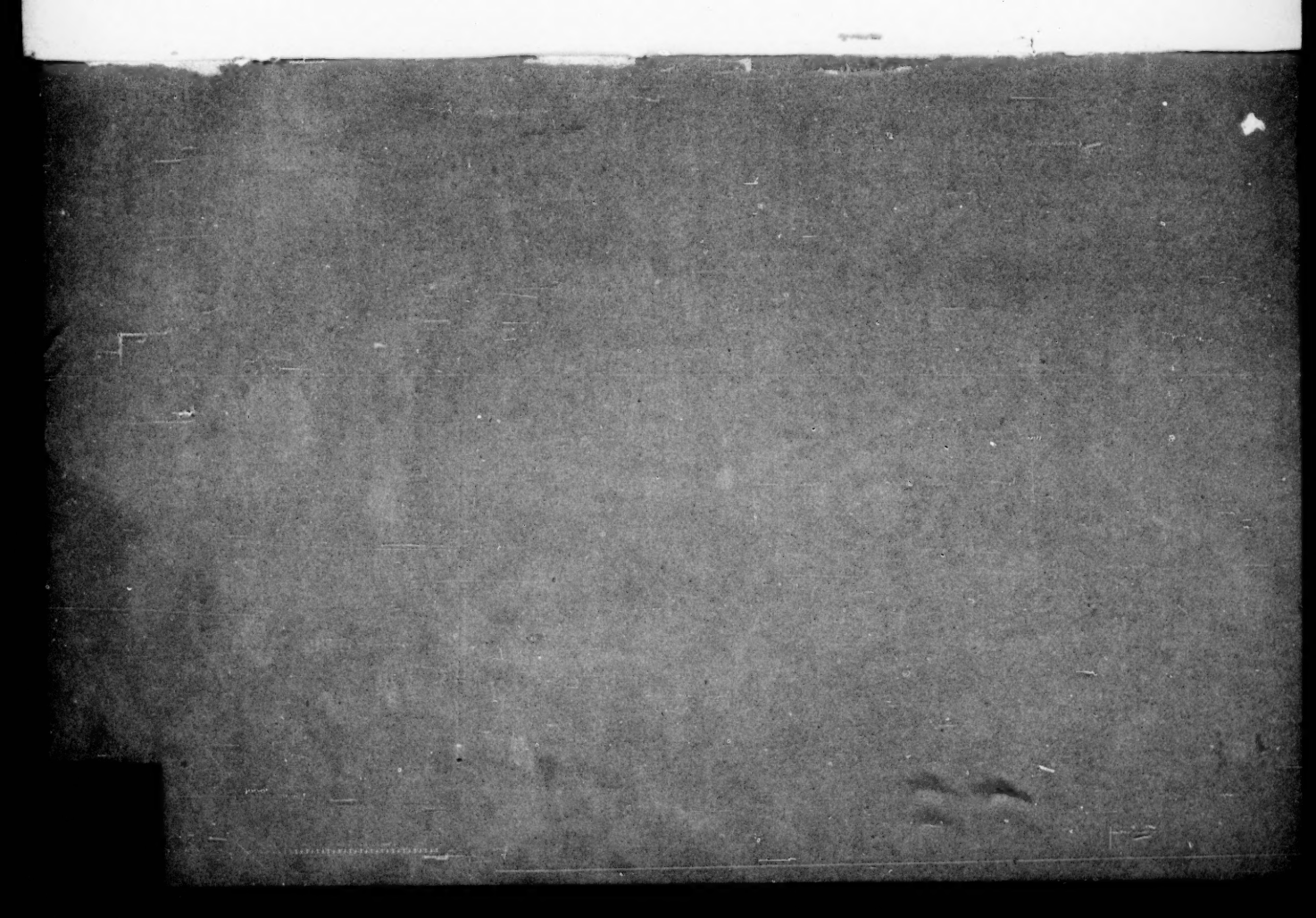
JACOB M. DUNCAN AND SIMON POEY, APPELLANTS,

vs.

THE STEAMSHIP FRANCIS WRIGHT, HER ENGINE, &c., HUMPHREY E. WOODHOUSE AND JOSEPH RUDD, JR., CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED NOVEMBER 25, 1878.



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1 U. S. circuit court, southern district of New York.

JACOB M. DUNCAN AND SIMON POEY, Libellants and appellants,
against
THE STEAMER FRANCIS WRIGHT, HER TACKLE, etc., Humphrey E. Woodhouse, and Joseph Rudd, jr., claimants and appellees.

APOSTLES.

Benedict, Taft & Benedict, libellants and appellants' proctors.
Butler, Stillman & Hubbard, claimants and appellees' proctors.
Filed June 20, 1874.

We consent that the within apostles be returned to the U. S. circuit court as the original apostles in this cause.
N. Y., June 19, 1874.

BUTLER, STILMAN & HUBBARD,
Proctors for Appellee'.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

JACOB M. DUNCAN, SIMON POEY, LIBELLANTS & appellants,
vs.
THE STEAMER FRANCIS WRIGHT, HER TACKLE, &c., cl'm'ts & appelle's.

I, George T. Betts, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this 20th day of June, in the year of our Lord one thousand eight hundred and seventy-four and of the Independence of the said United States the ninety-eighth.

[L. S.] GEO. T. BETTS, *Clerk.*

2 Benedict, Taft & Benedict, proctors for lib'lants & app'll's.
Butler, Stillman & Hubbard, pr. for cla'ts & appellees.

3 To the honorable Samuel Blatchford, judge of the district court of the United States within and for the southern district of New York:

The libel of Jacob M. Duncan and Simon Poey, copartners, trading as Duncan & Poey, merchants of the city of Philadelphia, against the steamship Francis Wright, of New York, her tackle, apparel, boilers, machinery and furniture, and against Humphrey E. Woodhouse and Joseph Rudd, jr., copartners, trading as Woodhouse & Rudd, of New York, and all persons lawfully intervening for their interest in the said steamship in a cause of contract, civil and maritime, alleges as follows:

First. That the said Woodhouse & Rudd, on the thirteenth day of September, one thousand eight hundred and seventy-two, as the owners

of the said steamship Francis Wright, of New York, of the burthen of six hundred tons, or thereabouts, then lying in the harbor of New York, chartered the said steamship unto the libellants for the term of six months, to run between Philadelphia or New York and Galveston, or any intermediate safe port in the United States, or any foreign port not prohibited by the insurance. It being further understood and agreed by the said charter that the said libellants were to have the privilege of cancelling the said charter at the expiration of three months upon giving the said Woodhouse & Rudd fifteen days' notice and the payment of fifteen hundred dollars bonus, on the following terms; that is to say: First. The said Woodhouse & Rudd agreed that the said vessel in and during the said voyage, should be kept tight, staunch, well fitted, tackled and provided with every requisite for such a voyage. Second. That the whole of the said vessel, with the exception of the necessary room for the sails and cables, should be at the sole use and disposal of the said libellants during the voyage aforesaid. Third.
4 That they, the said Woodhouse & Rudd, would take and receive on board of the said vessel, during the aforesaid voyage, all such lawful goods and merchandise as the said libellants or their agents might think proper to ship, and the libellants agreed with the said Woodhouse & Rudd, in consideration of the covenants and agreements to be kept and performed by the said Woodhouse & Rudd, to charter and hire the said vessel as aforesaid, on the terms following; that is to say: First. To man, coal, and victual the steamer, and pay all expenses of every nature (including port charges, etc.) connected with the running of the steamer, except insurance on the vessel and repairs. Second. To pay to the said Woodhouse & Rudd, or their agent, for the charter or freight of the said vessel during the voyage aforesaid, in manner following; that is to say: Eighty-five ($85) dollars per day, United States currency, due daily, but payable at the expiration of each and every month n New York, vessel to be returned to the owners at the expiration of the charter in the same order and condition as she was then in, less the ordinary wear and tear—the libellants to take and deliver the steamer at New York. And it was further understood and expressly agreed in and by the said charter party, that the said owners, Woodhouse & Rudd, were to nominate, and the libellants were to appoint, the chief engineer, to be paid by the libellants at the rate of one hundred and twenty-five ($125) dollars per month, the libellants to appoint the captain, subject to the approval of the owners, and that the charter should commence at New York on the eighteenth of September, 1872; and that if from any derangement of the machinery the steamer was delayed, the time lost was not to be paid for by the libellants; and in case of such derangement (if any) the said Woodhouse & Rudd to have the privilege of cancelling the said charter party. In case of any wreckage, towage or salvage accruing to the vessel whilst under the said charter party, one-half of the said earning to be paid to the owners of the steamer; and to the true and faithful performance of the said charter party, the said Woodhouse & Rudd and the libellants bound themselves
5 and their heirs, executors, administrators and assigns, and also the said vessel, her freight and appurtenances, and the merchandise to be laden on board, each to the other, in the penal sum of the estimated amount of the said charter party (a true copy whereof is hereto annexed, marked Exhibit A.)

Second. That at and immediately after the making of the said charter party, the said Woodhouse & Rudd, having nominated ——— Sherman, chief engineer, and the said libellants having appointed Henry Denni-

son the master of the said vessel, with the approval of the said Woodhouse & Rudd, the said vessel was taken to the port of Philadelphia, where the said libellants fitted and furnished the said vessel with refrigerators and other suitable, sufficient, and proper appliances for carrying fresh beef from the port of Galveston, Texas, to the port of Philadelphia; and having laden the said vessel with a general cargo of merchandise, and with about two hundred and twenty tons of coal for the use and consumption of and by the said vessel, and also with about two hundred and sixty tons of ice for refrigerating purposes, left the port of Philadelphia for Galveston, Texas, on the third day of October, A. D. 1872, and arrived at the port of Galveston on the seventeenth day of October, A. D. 1872. That during the voyage from Philadelphia to Galveston the said steamer gave evidence of unseaworthiness by having a number of her boiler-tubes blown out, and by great and unusual leaking in her boiler-tubes, which rendered it very difficult to make steam on the vessel by reason of the water from the said blown out and leaking tubes escaping into the furnaces and affecting and diminishing the fires therein, by reason whereof the said steamer was unable to attain her usual and proper speed, and was fourteen days in making the passage from Philadelphia to Galveston, Texas, instead of ten days, which is the full, usual, and ordinary time for a steamer of that capacity to make the said voyage. That when the said vessel arrived at Galveston, Texas, the said Woodhouse & Rudd, through their agent and representative, the said Sherman, chief engineer of the said vessel, was duly notified and requested to make the proper and necessary repairs to the said boiler and the tubes thereof, in order that there should and might be no further delays after the cargo of fresh beef was laden on board of the said vessel, and in order that the said steamer should make the passage from Galveston to Philadelphia in the ordinary and usual time of ten days. The said Sherman, chief engineer of the said steamer, as the agent and representative of the said Woodhouse & Rudd, then and there, after the notice aforesaid, promised that all necessary and proper repairs to the said vessels, boiler, and the tubes thereof, should be made; but the libellants propound that the said Woodhouse & Rudd, by themselves and their agent, the said Sherman, chief engineer of the said steamer, refused and neglected to make the proper and necessary repairs to the said boiler or the tubes thereof, by reason whereof the said steamer, having taken and laden on board a cargo of about seventy tons of fresh beef, was, on the thirty-first day of October, 1872, being then four hours at sea out of the port of Galveston on her voyage to Philadelphia, compelled to put back to Galveston for repairs, by reason of the boiler-tubes again blowing out and leaking badly, and was detained at Galveston seven days thereafter in repairing some of the said boiler-tubes. That the said steamer again left the port of Galveston, Texas, for Philadelphia on the seventh day of November, 1872, and was fifteen days making the voyage, owing to the unseaworthy condition of the said steamer—some of the boiler-tubes blowing out and others of them leaking so badly that the boiler could with difficulty make steam, and thereby the speed of the vessel was greatly reduced below what her ordinary speed would have been if the said vessel's boiler-tubes had been kept in a proper and seaworthy condition.

Third. That by reason of the detention of the said steamer at Galveston, Texas, while making repairs; by reason of the detention of the said steamer in making her passage from Galveston to Philadelphia, as aforesaid, owing to the unseaworthy condition of the said boil-

er-tubes, and by reason also of the hot water which escaped from the said defective boiler-tubes and was negligently allowed to run into the bilge of the said steamer and melt the ice in the refrigerators where the said cargo of fresh beef was stowed, the said cargo of fresh beef became damaged, spoiled, and entirely lost to the libellants.

Fourth. And the libellants further propound that they have well and truly performed and kept all the covenants and undertakings in the said charter party on their part to be performed and kept, but neither the said Woodhouse & Rudd, nor the said steamer have well and truly performed and kept the covenants and undertakings on the part of the said Woodhouse & Rudd and of the said vessel, according to the said charter party to be performed and kept. That the said steamer was not by them kept constantly staunch, well fitted, tackled, and provided with every requisite for such a voyage. That the value of the said cargo of fresh beef at the port of Philadelphia was twenty-three thousand dollars, and that, by reason of the failure of the said Woodhouse & Rudd and the said vessel to comply with their said undertakings and covenants, the said cargo of fresh beef has been wholly lost to the libellants, and they have been otherwise largely damaged.

Fifth. And these libellants further propound that before and at the time of the making of the said charter party the said Woodhouse & Rudd, the owners of the said steamer Francis Wright, were informed and knew of the purpose for which the said steamer was chartered by these libellants—that is to say, for the purpose of carrying fresh beef from Galveston, Texas, to Philadelphia and other ports in the United States, and that they also knew that the said steamer was in an unseaworthy condition as regards her boiler and its tubes, and that, well knowing such fact, they suffered and permitted the said vessel to go into an employment for which she was entirely unsuited, by reason of the said insufficiency of her boiler-tubes, and also neglected, during such employment, to keep the said steamer and her boiler-tubes in proper order and repair, as by the said charter party they expressly covenanted and agreed to do, and that, by reason of such neglect, the damages occurred to the libellants, for which the said steamer and her owners are responsible to the charterers to the amount of thirty thousand dollars, or thereabouts.

Sixth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of law may issue against the said steamer Francis Wright, her tackle, apparel, boilers, machinery, and furniture now lying in the port of , and that the said Humphrey E. Woodhouse and Joseph Rudd, jr., copartners, trading as Woodhouse & Rudd, and all other persons having, or pretending to have, any interest in the said vessel may be cited to appear and answer the matters aforesaid, and that this honorable court will be pleased to decree to the libellants such sum for damages for the loss aforesaid, and for the violation of the said charter party, as may be just against the said steamer and the said Humphrey E. Woodhouse and Joseph Rudd, jr., copartners, trading as Woodhouse & Rudd, with costs, and that the said vessel may be condemned and sold to pay the same, and that the libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

R. D. BENEDICT, *Proctor.*

Sworn to before me this 19th day of Dec., 1872.

WM. D. JONES,
Notary Public for Kings Co.

BENEDICT, TAFT & BENEDICT, *Proctors.*
E. C. BENEDICT, *Advocate.*

9 *Exhibit A, to which the foregoing libel refers.*

This charter-party, made in the city of New York this 13th day of September, in the year one thousand eight hundred and seventy-two, between Messrs. Woodhouse & Rudd, owners of the steamer Francis Wright, of New York, of the burthen of 600 tons or thereabouts, now lying in the harbor of New York, of the first part, and Messrs. Duncan & Poey, merchants of Philadelphia, of the second part, witnesseth:

That the said party of the first part, in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, does covenant and agree on the freighting and chartering of the said vessel to the said party of the second part for the term of six months, to run between Philadelphia or New York and Galveston, or any intermediate safe port in the United States, or any foreign port not prohibited by the insurance.

It is further understood and agreed, that the said parties of the second part are to have the privilege of cancelling this charter at the expiration of three months, upon giving the parties of the first part fifteen days' notice, and the payment of fifteen hundred dollars bonus on the terms following, viz:

First. The said party of the first part agrees the said vessel, in and during the said voyage, shall be kept tight, staunch, well fitted, tackled, and provided with every requisite for such a voyage.

Second. The said party of the first part further agrees the whole of the said vessel (with the exception of the necessary room for the sails, cables) shall be at the sole use and disposal of the said party of the second part during the voyage aforesaid.

Third. The said party of the first part further agrees to take and
10 ceive on board the said vessel, during the aforesaid voyage, all such lawful goods and merchandise as the said party of the second part, or their agents, may think proper to ship. And the said party of the second part, in consideration of the covenants and agreements to be kept and performed by the said party of the first part, do covenant and agree with the said party of the first part to charter and hire the said vessel, as aforesaid, on the terms following, viz:

To man, coal, and victual steamer, and pay all expenses of every nature (including port charges, etc.) connected with running of the steamer, except insurance on vessel and repairs.

Second. The said party of the second part do further agree to pay to the said party of the first part, or their agent, for the charter or freight of said vessel, during the voyage aforesaid, in manner following, viz:

Eighty-five ($85) dollars per day, United States currency, due daily, but payable at the expiration of each and every month, in New York; vessel to be returned to the owners at the expiration of this charter, in the same order and condition as she is now in, less the ordinary wear and tear. Charterer to take and deliver the steamer at New York; owners to nominate and charterers to appoint chief engineer, to be paid by charterers at rate of one hundred and twenty-five ($125) dollars per month. Charterers to appoint captain subject to the approval of the owners. It is also agreed that this charter shall commence at New York on the 18th of September, 1872.

If from any derangement of machinery steamer is delayed, the time lost is not to be paid for by charterers, and in case such derangement, if any, owners to have privilege of cancelling charter. In case of any wreckage, towage, or salvage, accruing to the vessel whilst under this charter, one-half of said earning to be paid to the owners of the steamer. To the true and faithful performance of all the foregoing covenants and agreements the said parties do hereby bind themselves, their 11 heirs, executors, administrators, and assigns, and also the said vessel, her freight and appurtenances, and the merchandise to be laden on board, each to the other in the penal sum of estimated amount of this charter.

In witness whereof the said parties have hereunto interchangeably set their hands and seals the day and year first above written.

WOODHOUSE & RUDD.
DUNCAN & POEY.

Sealed and delivered in presence of
W. H. STARBUCK, witness to both signatures.

Stipulation for libellant's costs, entered into pursuant to the rules and practice of this court.—Filed the 21st day of December, 1872.

District court of the United States, for the southern district of New York.

Whereas a libel was filed in this court on the 21st day of December, in the year of our Lord one thousand eight hundred and seventy-two, by Jacob M. Duncan and Simon Poey against the steamship Francis Wright, her engine, etc., and Humphrey E. Woodhouse and Joseph Rudd, jr., for the reasons and causes in the said libel mentioned, and praying that said steamship, etc., may be condemned, etc., and process issue against said steamship and said respondents and the said libellants, and Abel Denison, surety parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

JACOB M. DUNCAN AND SIMON POEY,
By WM. D. JONES *acting as agent in their behalf.*
ABEL DENISON.

Taken and acknowledged this 21st day of December, 1872, before me.
GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Abel Denison, party to the above stipulation, being duly sworn, doth depose and say that he resides in the city of New York, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

ABEL DENISON.

Sworn to, this 21st day December, 1872, before me.

GEO. F. BETTS,
U. S. Commissioner.

Recorded the 21st day of December, 1872.

Clerk.

13 At a stated term of the district court of the United States of America, for the southern district of New York, held at the United States court rooms, in the city of New York, on the 31st day of December, in the year of our Lord one thousand eight hundred and seventy two.

Present, the honorable Samuel Blatchford, district judge.

JACOB M. DUNCAN ET AL. *vs.* THE STEAMSHIP FRANCIS WRIGHT, HER tackle, etc., and H. E. Woodhouse and Joseph Rudd, jr.	24419.

On motion of Benedict, Taft and Benedict, proctors for the libellants, it is ordered that the notice for all persons to appear and intervene, for their interest in the above entitled cause, be published by the marshal until the 7th day of January, 1873.

(Signed) SAMUEL BLATCHFORD.

A copy.

GEORGE F. BETTS, *Clerk.*

14 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel in rem and personam hath been filed in the district court of the United States, for the southern district of New York, on the 21st day of December, in the year of our Lord one thousand eight hundred and seventy-two, by Jacob M. Duncan and Simon Poey against steamship Francis Wright, her engine, etc., and Humphrey E. Woodhouse and Joseph Rudd, jr. (breach of contract, $30,000), for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamer or vessel, her tackle, etc., may be cited in general and special, to answer the premises, and all proceedings being had that the said steamer or vessel, her tackle, etc., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellants:

You are therefore hereby commanded to attach the said steamer or vessel, her tackle, etc., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the 7th day of January, 1873, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And we do hereby further empower, and strictly charge and command you, the said marshal, that you cite and admonish the said respondents, if they shall be found in

your district, that they be and appear before the said district court
15 on the 7th day of January, 1873, at the United States court rooms in the city of New York, then and there to answer the said libel, and to make allegations in that behalf; and have you then there this writ, with your return thereon.

Witness the honorable Samuel Blatchford, judge of said court, this 21st day of December, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-seventh.

[SEAL.] GEORGE F. BETTS, *Clerk.*

BENEDICT, TAFT & BENEDICT,
Libellants' Proctors.

In obedience to the within monition I attached the steamship therein described on the 21st day of December, 1872, and, pursuant to an order of the court, a copy of which said order is hereunto annexed, have given notice to all persons claiming the same that this court will, on the 7th day of January inst., if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter, proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated January 7, 1873.

GEORGE W. SHARPE,
United States Marshal.

16 U. S. district court.

JACOB M. DUNCAN ET AL.
vs.
THE STEAMSHIP FRANCIS WRIGHT AND H. E. Woodhouse et al.

We hereby consent that the steamship Francis Wright be discharged from custody, in this action, on the claimants and respondents filing a stipulation for value in the sum of thirty-two thousand dollars, to be signed by Joseph Rudd as surety, and also the usual stipulation for costs, and paying into court the amount of the clerks and marshal's costs.

February 28, 1873.

BENEDICT, TAFT & BENEDICT,
Libellants' Proctors.

17 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York on Friday, the 28th day of February, in the year of our Lord one thousand eight hundred and seventy-three.

Present, the honorable Samuel Blatchford, district judge.

THE STEAMSHIP FRANCIS WRIGHT, HER tackle, etc., and Humphrey E. Woodhouse and Joseph Rudd, jr., *asm.* JACOB M. DUNCAN & SIMON POEY. } 24419.

And now, Joseph Rudd, jr., part owner of the steamship Francis Wright, intervening for the interest of himself and of Humphrey E. Woodhouse in the said steamship, appears before the honorable court

and makes claim to the said steamship, etc., as the same are attached by the marshal under process of this court at the instance of Jacob M. Duncan & Samuel Poey; and the said Joseph Rudd, jr., avers that he and said Woodhouse were in possession of the said steamship at the time of the attachment thereof, and that the persons above named are true and bona fide owners of the said steamship, and that no other person is the owner thereof; wherefore they pray to defend accordingly.

H. E. WOODHOUSE,
By JOSEPH RUDD.
JOSEPH RUDD, JR.

18 Sworn to and subscribed this 28th day of February, A. D. 1873, before me.

JOHN A. OSBORN,
U. S. Commissioner.

BEEBE, DONOHUE & COOKE,
Proctors for Claimants.

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 28th day of February, 1873.

District court of the United States for the southern district of New York.

Whereas a libel was filed in this court on the 21st day of December, in the year of our Lord one thousand eight hundred and seventy-two, by Jacob M. Duncan et al., against the steamship Francis Wright, her tackle, etc., and Humphrey E. Woodhouse and Joseph Rudd, jr., for the reasons and causes in the said libel mentioned, and praying that said steamship, etc., may be condemned, etc., and process issued, and the parties hereto hereby consenting that in case or default of contumacy on the part of the claimants or their surety, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulatiors undersigned shall be, and each of them is, hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimants and respondents above named

19 shall pay all costs and expenses which shall be awarded against them by the final decree of this court or upon an appeal by the appellate court.

H. E. WOODHOUSE,
By JOSEPH RUDD, JR.
JOSEPH RUDD, JR.
JOSEPH RUDD.

Taken and acknowledged this 28th day of February, 1873, before me.
JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Joseph Rudd, party to the above stipulation, being duly sworn, doth depose and say that he resides in the southern district of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

Sworn to this 28th day of Feb., 1873, before me.
JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 28th day of February, 1873.

Clerk.

Stipulation for value entered into pursuant to the rules and practice of this court.—Filed the 28th day of February, 1873.

District court of the United States for the southern district of New York.
In admiralty.

Whereas a libel was filed on the twenty-first day of December, in the year of Lord one thousand eight hundred and seventy-two, by
20 Jacob M. Duncan et al. against the steamship Francis Wright, her tackle, etc., and Humphrey E. Woodhouse and Joseph Rudd, jr., for the reasons and causes in the said libel mentioned; and whereas the said steamship, etc., is in the custody of the marshal, under the process issued in pursuance to the prayer of said libel; and whereas it has been consented that said steamship, etc., be released from custody upon the claimants filing due claim thereto and executing stipulations for the costs and value, the latter in the sum of thirty-two thousand dollars, United States currency, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the claimants and respondents, or their surety, execution for the above amount with interest may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such that if the stipulators undersigned shall at any time, upon the interlocutory or final order or decree of the said district court, or any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to Beebe, Donohue & Cooke, esquires, proctors for the claimants and respondents of said steamship, etc., abide by and pay the money awarded by the final decree rendered by the court, or the appellate court if an appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

H. E. WOODHOUSE,
By JOSEPH RUDD, JR.
JOSEPH RUDD, JR.
JOSEPH RUDD.

Taken and acknowledged this 28th day of February, 1873, before me.
JOHN A. OSBORN,
U. S. Commissioner.

21 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Joseph Rudd, party to the above stipulation, being duly sworn, deposes and says that he resides in the city and southern district of New York; that he is worth the sum of thirty-two thousand dollars over and above all his just debts and liabilities.

Sworn to this 28th day of February, 1873, before me.
JOHN A. OSBORN,
U. S. Commissioner.

Recorded this 28th day of February, 1873.
Approved , 187 .

To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The answer of Humphrey E. Woodhouse and Joseph Rudd, jr., claimants of the steamship Francis Wright, her tackle, etc., to the libel of Jacob Duncan and Simon Poey, copartners under the name of Duncan

& Poey, merchants, of Philadelphia, against said steamer, respectfully shows:

First. That the claimants have duly held and claimed said vessel.

Second. That the claimants except to the said libel, on the ground that it joins the said vessel and Woodhouse & Rudd, and they pray that said libel may for said cause be dismissed.

Third. That the claimants admit that Woodhouse & Rudd, acting as agents for the said vessel, did, on the day stated in the first article of the libel, enter into a charter party, a copy of which is annexed to the said libel, and they deny each and every other statement in the first article of the libel except as herein stated.

22 Fourth. The claimants admit that the claimants did, under the clause in the charter, name Sherman as chief engineer; that the libellants appointed said Sherman as such engineer, and that the libellants appointed said captain as such master; that thereupon, at New York, the libellants took possession and charge of said steamer Francis Wright, and have and had the entire charge and possession thereof as victualer and mariner the same since that time up to the time she returned to the port of New York; that as to what the libellants did with her the claimants are ignorant; that the claimants deny that the said Sherman was their agent or representative; also, claimants further deny the statements in the second article of the libel, and each of them, not herein admitted; and allege, further, that whatever repairs were made, and which the claimants were bound to make, were made.

Fifth. That the claimants deny the statement in the third article of the libel, and each of them; and further says that the master and crew of said vessel were improper and incompetent for her navigation.

Sixth. That the claimants deny the statements and each of them in the fourth article of the libel, and say that said steamer was, so far as the claimants are bound to do, so kept as called for by the charter.

Seventh. Claimants wholly deny the statement in the fifth article of the libel.

Eighth. That the claimants further set up and allege that the libellants are not the parties really and solely interested as contractors in the said charter, as the claimants are informed and believe, and therefore states that the said charter was made on account of a number of persons other than or in connection with a number of persons who should be joined; the names of all of which persons are unknown

23 to the claimants in all, but in part such persons are Stevens and J Flannigan, Edward W. Wilson, Henry Dennison, and that each of said persons should be made libellant herein, as also all those really interested, and that this suit is improperly brought without the joinder of such persons; and claimants pray the same relief as those specially, exception for non-joinder, and respectfully submit that the suit should not be prosecuted without the said persons named, and those now unknown to the claimants be made parties.

Wherefore, your respondents pray that they may be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH RUDD, JR.

Sworn to before me this 7th day of January, 1873.

A. W. HALL,
Notary Public, N. Y. Co.

BEEBE, DONOHUE & COOKE, *Proctors.*

24 U. S. district court.

JACOB W. DUNCAN ET ALS.
v.
THE STEAMSHIP FRANCIS WRIGHT, H. E. Woodhouse, and Joseph Rudd.

Before Hon. Judge Blatchford.

JAN. 28, 1873.

For libellants, Benedict & Benedict.
For respondents, Beebe, Donahue & Cooke.
Mr. Benedict read the libel, and also the charter party, dated 13th September, 1872.
Mr. Beebe read the answer.

ISSACHAR E. HOOPER, called by the libellants, sworn.

Examined by Mr. BENEDICT:

Q. Where do you live?
A. In Philadelphia.
Q. What is your business?
A. A commission merchant.
Q. Are you acquainted with Duncan & Poey?
A. Yes, sir.
Q. Are you acquainted with Messrs Woodhouse & Rudd?
A. I am acquainted with Mr. Rudd only.
25 Q. Did you see Mr. Rudd in Philadelphia previous to the charter of the Francis Wright?
A. Yes, sir.
Q. Where?
A. At our office, No. 411 Walnut street.
Q. What do you mean by your office?
A. The office of Henry Denison & Co.
Q. Who were present?
A. Mr. Rudd and Mr. Starbuck, who represented Frederick Schmidt, of New York.
Q. Did you have any conversation with Mr. Rudd in reference to the charter of the steamer?
A. I did, sir.
Q. State what that conversation was.
(Objected to on the ground that the charter is in writing; excluded.)
Libellants' counsel offers to show, by the witness, that the owners of the vessel, before the charter was signed, were informed that the vessel was to go to Galveston under this charter, and that the cargo which the vessel was to bring from Galveston under this contract was a cargo of fresh beef, which is perishable.
(Objected to; excluded; exception.)
Libellants' counsel also offers to show that said owners were informed in like manner, that it was essential to the successful performance of such a voyage, under such charter, that there should not be any delay in such voyage occasioned by the condition of the vessel herself, or of her boiler or engine.
(Objected to; excluded; exception.)
26 HENRY DENISON, called by the libellants, sworn.

Examined by Mr. BENEDICT:

Q. Where do you live?

A. Germantown, Philadelphia.
Q. What is your business?
A. I have been in the commission business since the war.
Q. Have you been a shipmaster also?
A. Previous to that.
Q. What experience have you had as shipmaster?
A. A good many years. I have been in command of a number of ships—of Morgan's steamships; and, previous to that, in command of a number of steamers out of New York.
Q. How many years have you been master of steamers?
A. About five years, in one employ entirely.
Q. And how long were you chief officer on board of steamers?
A. A number of years; previous to that I was chief officer of the Black Warrior, and of the Brother Jonathan, and of the North America, and in six or eight steamships of Mr. Morgan's.
Q. You were master of the Francis Wright on the voyage under this charter?
A. I was, sir.
Q. When did you go on board of her?
A. We left here on the 18th of September last; I was on board of her the day previous, I believe.
Q. Where did you start from in New York?
A. From near Catharine Ferry, in Brooklyn; the next pier, I think; it was alongside of the East River bridge abutment, or very near there.
Q. Do you recollect the vessel stopping off Governor's Island?
A. I do, sir.
Q. Describe what the stoppage was.
27 A. We were running along down the river, and I heard the pilot tell the chief engineer to get the anchor ready; we had stopped; the chief engineer said there was some slight derangement of the machinery; I did not think much of it, as the ship had been lying up so long.
Q. How long had she been lying up?
A. I don't know; I had the impression for a year or so; I never heard of her before I came here.
Q. The vessel was not stopped by your orders?
A. No, sir; she was in charge of the pilot.
Q. Was she stopped by his orders?
A. Not by his orders that I know of.
Q. What did stop her?
A. Some derangement of the machinery, I believe.
Q. Did you ask the engineer what was the cause of the stoppage?
A. I think he informed me that he would have to be detained a few moments—a short time.
Q. Do you mean that the engineer stopped her, and afterwards spoke to you?
A. I think so; the engine stopped the first that I knew of it.
Q. How long was that stoppage?
A. A short time; I cannot say exactly.
Q. Did you anchor?
A. No, sir.
Q. Was it a sudden stoppage or a gradual stoppage?
A. The ship stopped her headway; I was not paying particular attention to it.
Q. What, after you got under way again?

A. We proceeded to Philadelphia, without any more delay or stoppages, I believe.

Q. And when did you arrive at Philadelphia?

A. The next afternoon, about four o'clock; on the 19th.

Q. Leaving here what hour of the day?

A. About ten o'clock in the morning, I think.

Q. Where was the vessel taken?

A. Taken right up to Cooper's Point—up right by the city of Philadelphia; a short distance above the city, opposite Richmond—a shipyard.

28 Q. Was anything done there to prepare her for the voyage?

A. Yes, sir; a good deal of work carried on there.

Q. What work was it?

(Objected to.)

Libellants' counsel offers to show that there was some work done to the engines, and also that the vessel was fitted with refrigerators for this voyage.

(Objected to; objection overruled.)

The COURT. I think, so far as the refrigerators are concerned, and under the allegation of the libel, it is proper to show that they did not put the beef on board without ice, and that they took proper means to preserve the beef.

A. There was a great deal of work carried on; the chief engineer had all his men there, and while we lay there the hold was fitted up for bringing home the beef from Galveston; the ship was put in order to go on the voyage in all her departments.

(Objected to.)

Q. Describe how the fitting up was done.

A. To the best of my ability the lower hold was wedged and made perfectly air-tight—intended to be, and I believe, made perfectly air-tight; and the between-decks were lined and stuffed, where the ice was to be stowed.

Q. Lined with what?

A. Ceiled up with common ceiling and stuffed with saw dust; the men were at work daily in the engineer's department.

Q. Who took charge of the work that was done in the engineer's department?

A. The chief engineer, Mr. John A. Sherman.

Q. Did you give any directions in reference to the engineer's work?

29 A. Not that I remember; it was out of my province.

Q. With reference to the refrigerators—do you remember whether there was any arrangement made in reference to securing a circulation of air?

A. Yes, sir; in order to bring the beef there was machinery put in there to drive a current of air; there was a great deal of work carried on.

Q. How was the machinery to be worked?

A. By steam to be supplied from the big boiler to a donkey engine which drove a fan that circulated the air.

Q. Do you know Woodhouse & Rudd, or either of them?

A. Yes, sir.

Q. Were either of them on board the vessel at any time in Philadelphia?

A. No, sir; I do not think they were.

Q. At the time of the inspection, were they there?

A. No, sir.

Q. How long was the vessel occupied in doing this work?

A. She left here on the 18th of September, and arrived in Philadelphia on the 19th, and was ready for sea on the third of October following; or she left on the 3d day of October following.

Q. What cargo did she take in at Philadelphia?

A. General cargo—Texas cargo.

Q. She took on board, also, some ice?

A. She took on board a schooner load of ice; I was informed 226 tons.

Q. Had you ever been engaged in the business before of bringing fresh beef from Galveston?

A. I had not been in the ship myself that brought it; but I sent a vessel from New Orleans to Lockport, Texas, for a cargo of beef, to be brought to Philadelphia.

Q. Were you in Philadelphia when she arrived?

A. I was.

Q. Were you in New Orleans when she was fitted up?

A. No, sir; not for that voyage.

Q. Did you know how that vessel was fitted up to bring the cargo—did you see how she was fitted up?

A. Yes, sir; I saw how she was fitted up.

30 Q. How did she bring the cargo?

A. In good condition.

Q. In what condition was this vessel, so far as the refrigerating apparatus was concerned, for bringing such a cargo?

(Objected to; excluded.)

Q. When did you arrive at Philadelphia?

A. The 17th day of October.

Q. Making the voyage in 14 days?

A. Yes, sir.

Q. Was there any difficulty with the engine of the vessel on the voyage out?

A. Frequent stoppages.

Q. What was the cause of the stoppages?

A. Leaking tubes, I was informed.

(Mr. Donohue objects to what the witness was informed.)

Q. Informed by whom?

(Objected to.)

The COURT. Let the witness tell what he observed in connection with the stoppages.

Q. State when the stoppages occurred, whether they were by your orders.

A. No, sir; not by my orders.

Q. When you found this vessel stopped, state anything that you observed.

A. I looked down the engine-room hatch and saw the engine stopped, that is all; I had to be told the reason.

Q. When you so looked down, could you see whether the boiler was leaking?

A. I did not see any leaks on the boiler myself on the outward passage.

Q. Were you informed by Mr. Sherman, the chief engineer, what was the cause of these stoppages?

(Objected to; excluded.)

31 Q. What kind of weather did you have going out?

A. Very pleasant weather till we got to the Tortugas.

Q. Those stoppages you speak of, were any of them before you got to the Tortugas?

A. I believe they were.

Q. Was there any weather on that voyage heavy enough to have injured the vessel or her machinery?

A. After we passed the Tortugas there were very heavy northers, and the ship rolled very heavily; I do not know how much she could stand before she would be damaged in her machinery.

Q. Before that, was there any such weather?

A. Nothing between us and the Tortugas.

Q. Were there any stoppages of the engine without your orders after you left the Tortugas?

A. I never ordered the engine to be stopped at sea.

Q. Were there stoppages of the engine after you passed the Tortugas?

A. I think there were; I would have to refresh my memory by the ship's log-book; I requested the ship's officer to keep a memorandum, when they began to be frequent, of the time we lost by stoppages.

Q. You did not keep the time yourself?

A. I kept a sort of journal of the thing; but the time was noted on the log-book by the ship's officer.

Q. Are you able to state the extent of time that you were stopped on the voyage out?

A. I figured it up, I think, at sixteen hours, all told, between here and Galveston.

Q. That is all the stoppages summed up?

A. Yes, sir; all the different ones.

Q. At Galveston, were there any repairs made to the boiler?

A. I believe there were, sir.

Q. Did you give any instructions to Mr. Sherman in relation to making repairs on the engine and boilers?

A. I did, sir.

Q. What did you tell him?

32 A. I told him to put them in better order before leaving Galveston homeward bound.

Q. Do you know what was done to them?

A. I cannot say everything that was done.

Q. How long was the vessel discharging her outward cargo?

A. Three days, sir.

Q. What cargo did you take on?

A. Fresh beef.

Q. How long were you engaged in taking on board the cargo?

A. Nine days, I believe, or eleven days; we lay there two weeks, and we were three days discharging, and the balance we were loading.

Q. When did you begin to take in the cargo—how many days before you left.

A. We were getting ready to take it in; we arrived in Galveston on a Thursday, and were discharged by Sunday, and commenced the following Wednesday to load the beef, and were finished the next week—Wednesday—ready to go to sea on Thursday, the 31st of October; we were seven days actually engaged in taking in the cargo.

Q. What time did you start from Galveston on Thursday?

A. I think we got away from the wharf about 11 o'clock.

Q. How long did you proceed on your voyage without difficulty?

A. We went down and over the bar, and I think we broke down about four o'clock that afternoon, or about four hours after we left the bar.

Q. What was the cause of the stoppage then, if you know; was it by your orders?

A. No, sir.

Q. Were you informed by the engineer what was the cause of the stoppage?

(Objected to.)

Q. Did you go into the engine room yourself?

A. I did not go down into it.

33 Q. How long did such stoppage continue at that time?

A. I think, at that time, thirteen or fourteen hours.

Q. And then what did you do?

A. Then we returned to Galveston.

Q. Why?

A. To thoroughly repair the boiler—the tubes of the boiler.

Q. Did you have a consultation with the engineer before returning to Galveston?

A. I did, sir.

Q. What was the subject of the consultation?

(Objected to.)

The COURT. I think it is competent to show the consultation with reference to the general subject of the condition of the boiler and engine, and that the captain did not return against the wishes of the engineer.

A. It was relative to our return—whether we should proceed as we were.

Q. What information did you receive from the engineer at that time as to the condition of the boiler and engine?

(Objected to; excluded.)

Q. Assuming the information which you received from the engineer to be true, was it prudent navigation to proceed upon the voyage without further repairs to the boilers?

(Objected to; excluded.)

Q. Why did you return to Galveston?

(Objected to; admitted.)

A. Because neither myself nor my chief officer thought it was safe to proceed further; my duty was to make the nearest port.

(Counsel for the respondents asks to have the answer stricken out. Motion denied.)

34 Q. Was there anything in the condition of the vessel, outside of the boiler and engine, which made it necessary for you *of* return.

(Objected to; admitted.)

A. No, sir.

Q. How long did it take you to make your way back to Galveston?

A. We got up to the wharf at Galveston about 4 o'clock on Friday afternoon.

Q. And when had you turned back?

A. About 10 o'clock in the morning, I think, we headed back to the bar—perhaps later.

Q. Were you 6 hours going up?

A. Yes, sir; going up to the wharf.

Q. I understand that the stoppage was about 4 o'clock in the afternoon.

A. Yes, sir.

Q. And you got under way to go back again about 10 o'clock next morning?

A. Yes, sir.

Q. What were you doing from 4 o'clock in the afternoon, when you stopped, until you headed back again?

A. She was lying there at the mercy of the sea—wallowing—rolling very heavy and drifting very fast to the southward and westward all the night.

Q. When was it that the consultation between you and the engineer took place?

A. It was in the afternoon some time; a short time before we started to return, as he was ready to start again, or would be ready shortly.

Q. Had you conferred with him before?

A. I think I had not seen him through the night.

Q. In the afternoon, at the time of the stoppage, did you confer with him?

A. I don't remember whether I had any conversation with him after that; I was so annoyed at the sudden breakdown; I think I had no particular conversation.

Q. You got back to Galveston about four o'clock in the afternoon—how long did you remain there?

35 A. From that Friday until next week—Thursday—early in the morning; we took an early morning start the following Thursday.

Q. Do you know what was being done on board of her during that time?

A. I knew that the tubes of the boilers were being repaired.

By Mr. DONOHUE:

Q. Did you see it being done?

A. No, sir.

(Mr. Donohue objects.)

By the COURT:

Q. Tell what work you saw—what material you saw on board?

A. Men came down to examine; I was told that they came to look at the boiler; I saw workmen pass in and out, and I saw the engineer's department all busy; I did not go down into the engine room to see; I left the matter in charge of the engineer.

Q. Did you see any material go on board?

A. I do not remember; I went up to the shop to see about a certain tool that was necessary to make the repairs—a tool they called an expander—to expand the tubes.

Q. Expand the tubes of the boiler?

A. I think it was for that purpose.

Q. Do you know of that tool being obtained?

A. I saw portions of it, I believe.

Q. Were you called upon to pay any bills for anything furnished to the vessel during that time?

A. Yes, sir.

Q. What for?

(Objected to on the ground that the bills will show for themselves.

36 Q. When was the vessel reported ready for sea at Galveston?

A. Thursday morning, November 7, I think.

Q. Who made that report to you?

(Objected to as immaterial; excluded; exception.)

Q. Who had charge of the making of the repairs?
A. The chief engineer.
Q. How soon after she was reported ready to you did you start?
A. I think the repairs were ready the night before, and I told the pilot to be ready at an early hour in the morning.
Q. Could you have started before?
A. Not without steam, sir.
Q. Could you have started after the report, before you did?
A. No, sir; the pilot then wanted to say when we should leave; he told me he would be on board early in the morning to take me to sea.
Q. After you went to sea were there any other stoppages of the vessel?
A. No; I believe no full stoppages from there to Key West; we hove her to for twenty hours for heavy weather, and then proceeded on our way to Key West.
Q. When did you arrive at Key West?
A. The following Wednesday.
Q. And when did you leave there?
A. The next day—Thursday.
Q. Were there stoppages after that?
A. Yes, sir.
Q. When did you arrive at Philadelphia?
A. On Saturday, I think—the 23d or 24th of November—the 23d, I believe; we arrived at Delaware City on Friday, coming up the river.
Q. How much time was lost on the passage from Galveston by these stoppages which were not made by your orders?
37 A. I cannot say without referring to the log book the number of hours we stopped.
Q. Did the cargo arrive at Philadelphia in good order?
A. No, sir; not the beef.
Q. Did you have any other cargo besides the beef?
A. Yes, sir.
Q. What became of the beef?
A. We hove it overboard—about half of it—say to the northward of Hatteras: the balance we brought to the wharf in Philadelphia, and then went down the river and the next day threw it overboard.
Q. It was all spoiled?
A. It was all spoiled, sir.
Q. Up to what time did it continue good?
(Objected to.)
Q. Did you eat of that beef on the passage?
A. Frequently, sir.
(Objected to.)
Q. Did you have any other fresh beef on board except what was in those refrigerators; did you take any other on board at Galveston?
A. I believe not, sir.
Q. Did you eat fresh beef on the passage from Galveston?
A. Very often, sir.
Q. Up to what date was it eaten?
A. I saw the cook cutting it and cooking it and the men eating it on the Monday after we left Key West, myself.
Q. You saw the men eating it?
A. I saw them eating it.
Q. Do you remember up to what time you eat of it yourself?
A. I do not remember exactly the date that I eat the last myself; I

had had a surfeit of it; I know that I asked the cook to give me something different, for I had been eating fresh beef some time.

38 Q. Did you eat it after you left Key West at all?

A. I don't know, sir, that I did myself; I think I did; others did around the cabin table.

Q. It was on your cabin table?

A. It was, sir.

Q. And did you see it yourself before it was cooked?

A. I did, sir.

Q. What was its condition at that time?

A. I thought it was good, sir; it cut as if it was.

Q. Was the fact that the beef was beginning to spoil reported to you?

A. I do not remember whether it was reported to me; I think that I had my suspicions; first I should have to explain that the beef was under the charge of a person expressly for that purpose; where you went down the hold was not large enough to admit me; I could not go down and give it a personal examination in the hold.

Q. Was all which was thrown overboard on the voyage thrown over by your orders?

A. Yes, sir.

Q. What was the necessity for that?

A. It was bad—spoiled.

Q. What made it necessary to throw it overboard, being spoiled?

A. It was beginning to be offensive.

Q. Was there anything detrimental to the health of the persons on board, or what was the reason?

A. I would not like to come into port with it in the condition in which it was, and I decided to throw it overboard; it was no good—not worth anything.

Q. After the vessel arrived at Philadelphia, what was done with her?

A. After she went down the river and got back again, she remained there in Philadelphia; there was nothing done with the ship; she did not go out of the river again.

Q. Was there any examination made in reference to her engine and boilers?

A. Yes, sir.

Q. Do you recollect when that was?

39 A. I cannot recollect the day or the date—it was after the 24th of November; a few days after we arrived there.

Q. When was she brought to New York?

A. I left Philadelphia with her on Sunday; I do not remember the day of the month; it was the 15th or 16th of December—15th, I think.

Q. When did you arrive here?

A. On Monday afterwards—the 16th.

Q. And what did you do with the vessel here?

A. I took her where Duncan & Poey ordered me—to the Atlantic dock.

Q. Did you go and see Woodhouse & Rudd about the matter then?

A. I did the next day (it was storming very hard); the next morning I went to see them.

Q. What did you do with reference to the vessel with them?

A. I went to see Mr. Rudd the next day—Tuesday, I think; he told me to come in on Wednesday; I also went on Wednesday, and, I think, on Thursday he gave me a receipt for the ship, when I came home.

Q. What was the reason of your going into Key West?

A. We went there for coal and ice.

Q. How much ice did you take on board?

A. Forty tons.

Q. And how much coal?

A. Sixty tons, I think; it was twenty tons of ice.

Q. How much coal did you have on the vessel when you arrived at Philadelphia?

A. None; I believe we got a little at Delaware City to come up with from there; we used it all by the time we arrived at Delaware City.

Q. Did you take any coal on board at Galveston?

A. No, sir; no coal at Galveston.

Q. Why not?

A. It was so very high there that I would not buy it; I found I could get it cheaper at Key West; I was quite sure I could buy it cheaper at Key West; I saw some parties and priced the coal at Galveston, but I did not buy it.

40 Q. How long a time was occupied by your putting into Key West?

A. Just about one day; I think we went in on Wednesday after dinner, when we reached the wharf, and left the next day about the same time.

Q. Have you ever been engaged in the trade between Galveston and Philadelphia?

A. No, sir.

Q. Do you know what is the ordinary time for a steamer from Galveston to Philadelphia?

(Objected to; excluded.)

Cross-examined by Mr. DONOHUE:

Q. Is that your handwriting (showing letter dated September 24, 1872)?

A. Yes, sir.

(Marked A for identification.)

Q. Is this also your handwriting (showing letter dated October 21.)

A. Yes, sir.

(Marked B for identification.)

Q. What was your connection with this expedition for beef—were you interested in it?

A. I was interested in it.

Q. Was it in the shape of a company?

(Objected to.)

Q. Were you interested in the voyage?

A. I was interested in it and got an interest in it; I owned the invention by which the beef was to be brought, and I put the use of that invention in for my interest.

Q. This whole operation was under your invention to bring beef to Philadelphia?

41 A. Yes, sir.

Q. You had a plan for doing it?

A. Yes, sir.

Q. And you put that in?

A. Yes, sir.

Q. And the vessel was to be chartered for doing so, and the profits were to be divided in some way, and you were one of the parties?

A. I want to explain.

By the COURT:

Q. You had invented a mode of bringing beef from Galveston, and

you put that in as your capital in this expedition; and, if any profits were made, you were to have a certain share of them for the use of your invention?

A. That was about the whole story.

By Mr. DONOHUE:

Q. And all the expenses of this charter were to go into the account?

A. Yes, sir; the ship was chartered and fitted out under that arrangement.

Q. And all her expenses that Duncan & Poey paid, you were to pay your share of?

A. We were to make an experimental voyage first; we had no writings drawn up.

Q. Was this an experimental voyage before you made any definite arrangement?

A. Yes, sir.

Q. And this was that experimental voyage?

A. This was the first experimental voyage.

By the COURT:

Q. Do you mean to say that, if there were any profits on this voyage, you would not have had any?

A. I did not expect any, except my wages, on this voyage.

42 By Mr. DONOHUE:

Q. For the purpose of seeing whether it would pay?

A. Yes, sir; as a regular business investment; I had already proved that.

Q. Do not tell me what you had proved; you came on here and took charge of the vessel.

A. I did, sir.

Q. There was no other captain on board but you?

A. No, sir.

Q. And you were put in charge of the ship by those interested in this voyage?

A. I believe I was; I came here with Duncan & Poey's order to bring the ship to Philadelphia.

Q. How long before that had you been to sea?

A. The last ship that I was on was the Collins' steamship Atlantic, in 1861—twelve years ago.

Q. Running from where to where?

A. From New York to Hilton Head, in the government employment; I was chief officer of her.

Q. Since then you have been in the commission business?

A. Since that time in the shipping and commission business; I have been only to sea as a passenger.

Q. Did I understand you to say that, up to this trip in the Atlantic, you had been steadily going to sea, or had you knocked off any time?

A. Only from the time that the Southwest Passage was blockaded.

Q. How long?

A. A few months; I think I came North in June, and I joined the expedition in November following, or October.

Q. Prior to that time you had been in steamships sailing between this and Texas?

A. Yes, sir; in Mr. Morgan's employment.

Q. Who shipped the crew when you came to New York?

A. We took her round to Philadelphia with a gang of riggers, I

43 believe; we had no regular crew in my department; the chief engineer's crew was shipped here; he attended to that.

Q. The chief engineer usually attends to that?

A. Yes, sir; in all ships that I have been in.

Q. Did you ever give orders at any time, on board the steamer, to the chief engineer that he did not obey?

A. I cannot say that I did.

Q. You got round to Philadelphia, and there certain things were done; among others, the putting in this arrangement for bringing the meat?

A. Yes, sir.

Q. Under whose direction was that done?

A. Mr. Tilton's.

Q. Who is he?

A. A ship carpenter there, who fitted up a ship of mine last year.

Q. I mean which of the parties here who were interested gave the directions; did you give them, or did Duncan & Poey?

A. I gave my orders, and he did the work; I was entrusted with that by Duncan & Poey—to have the same party fix up this ship that fixed up my ship.

Q. Leaving out the engine and the boilers, who did all the other work on her?

A. Mr. Tilton put in the refrigerators.

Q. And the caulking?

A. He did all that.

Q. Did you give him directions to put everything in complete order?

A. I think I did.

Q. He was a ship carpenter?

A. Yes, sir; a man of large business, or a prominent ship carpenter in his way; he built a great many fore-and-aft schooners, and he has a yard at Cooper's Point.

Q. You say they were at work at the engine while you were at Philadelphia—the engineer's men?

A. Yes, sir.

44 Q. Is it not customary on board of steamers for work to be going on at the engine while lying idle, preparing for sea?

A. I have always seen more or less work going on; some want more work and some less.

Q. Who paid the bills for any work done on the engine, or anything else, in Philadelphia?

A. All the bills were sent through my hands; Duncan & Poey paid them.

Q. Did those bills for fixing and repairing the engine go through your hands?

A. No, sir; the ship paid the wages of every one.

Q. Duncan & Poey paid the wages of every one?

A. Yes, sir.

Q. The engineer's men and all?

A. All those attached to the ship.

Q. Was there any work done on the steamship at Philadelphia which you did not pay for?

A. Yes, sir; there was work done which I think the owner here paid for.

Q. Paid for directly, or did Duncan & Poey pay first?

A. I think the owners here paid.

Q. Did they pay it to Duncan & Poey?

A. I do not know.

Q. So far as you know, you do not know of any bills paid except by Duncan & Poey?

A. I do not know of any one that paid anything else.

Q. What I mean is the actual work done and actual payment of the bills; did not Duncan & Poey actually pay the bills for everything done in Philadelphia?

A. I do not know that.

By the COURT:

Q. Do you know the fact that bills to mechanics on shore were paid?

A. I did not see the bills, and did not see them paid; I paid every one here that I took round with me.

Q. You paid all the crew that took the vessel round?

A. Yes, sir.

45 Q. And commenced a new operation when you started from Philadelphia?

A. Yes, sir; when I commenced from Philadelphia, I paid every one up from the time I had been on the ship, since I took charge of her here.

Q. And you continued to be master of her in charge up to the time you delivered her here again?

A. I did, sir, up to the time I delivered her at the Atlantic dock.

Q. I understand that of your own knowledge you did not know the cause of the stoppage going down the bay as you went out?

A. I knew the engine stopped.

Q. But you did not know what caused it?

A. No, sir; I could not tell; only what I was told.

Q. You came on here how long before you took her away?

A. Two or three days, I think; I was over here on the 13th or 14th, and went back again.

Q. Where was the vessel lying when you first came?

A. Near Catharine Ferry, on the Brooklyn side.

Q. You came here two or three days before you took her away?

A. Yes, sir; and went back to Philadelphia, and came back again.

Q. Were you on board the vessel while you were here?

A. Yes, sir.

Q. How much of the time?

A. I was there one day perhaps an hour or two; I do not remember how long; I telegraphed for a ship carpenter, Mr. Tilton, to come, and I went on board with him next morning; I wanted him to measure the capacity of her hold.

Q. Did Mr. Tilton examine her over with you?

A. He examined her lower hold and between decks.

Q. Did he look at the condition of the vessel?

A. I presume he did.

Q. Was not her condition spoken of there between you?

A. I believe it was, sir; it is very natural we should.

46 Q. I want your recollection, if you have any.

A. I have no recollection of any definite conversation.

Q. She went to Philadelphia; when she got there, and was ready for sea, was she examined by the government inspector there in Philadelphia?

A. Yes, sir; she was.

Q. You could not go to sea without proper inspection?

A. Not without a certificate.

Q. Can you tell me where that inspector's certificate you got is?

A. On board the ship.

Q. Is this the paper (showing paper)?
A. One of them; she had three like that.
Q. Any difference in them?
A. No, sir.
(Paper marked C, for identification, offered in evidence by the respondents.
Libellants object on the ground that the paper is not the best evidence of the facts contained in it.)
The COURT. It is good evidence of the fact that he got a certificate; but that fact, I think, is immaterial in view of the charter party.
Mr. DONOHUE. We offer it for the purpose of showing that before the vessel went from Philadelphia, the parties had the vessel inspected—boilers and all.
The COURT. I do not think that is of any consequence.
(Excluded.)
Q. Did you, before leaving Philadelphia, apply for an inspection certificate by any of the inspectors?
A. I did not myself.
Q. Who did?
A. I really cannot say who ordered the inspection on board; I can say who I understand did.
Q. Is this your writing (showing note)?
47 A. It is, sir.
(Marked D, for identification.)
Q. Is that your signature also (showing paper)?
A. Yes, sir.
(Marked E, for identification.)
Q. Now, please to look and see whether you did not yourself order or cause these inspectors to come on board and inspect the vessel.
A. I never called myself at the inspector's office.
Q. Did you direct any one else to do it?
A. I do not recollect doing so.
Q. Did you know of their coming?
A. I heard they were coming.
Q. Who told you?
A. We all knew so.
Q. Who told you?
A. The chief officer, I think, told me; also, the chief engineer.
Q. Do you recollect that the inspectors were to be on board on a particular day, and you wanted these parties to be there at the same time?
A. I recollect corresponding with Messrs. Woodhouse & Rudd.
Q. Did you know the inspectors were to be on board on a particular day?
A. I was informed they were.
Q. Did you desire these parties to be on board the same day?
(Objected to; excluded.)
Q. Was she inspected?
A. She was, I believe.
Q. Were you there?
A. I was there.
Q. Did you see the inspectors looking round?
48 A. I saw gentlemen trying something on the boiler; I was there when they were on board—two gentlemen; one of them I afterwards saw at the inspector's office.
Q. Was the certificate which I have shown you—marked C—one of the three on which you sailed the vessel?

A. Yes, sir.

Q. Was there anything which any one declined to do in preparing or fixing the vessel, in Philadelphia, that you asked them to do?

A. I believe not.

Q. Was there anything, at any time, during the whole voyage, that was not done by any one, which you requested to have done?

A. I cannot answer that question.

Q. Have you any recollection of requesting anything to be done that you know was not done?

A. I do not know how to answer it; I cannot tell you the amount of repairs that was necessary; I ordered all necessary repairs to be made, and the person in charge of that department said he would make them—they should be attended to; and I paid the bills promptly for everything that was ordered or bought.

Q. What repairs, of any kind, were made on the vessel; before you left Philadelphia, the bills were rendered to you, and you paid them?

A. I believe so, sir.

Q. Were you limited by any one as to the amount of repairs that you should make, or anything?

A. I was not; I ordered thorough repairs to be made, and I would pay the bills, whatever they amounted to.

Respondents' counsel offers in evidence the two letters marked D and E.

(Objected to as immaterial; excluded.)

Respondents' counsel offers letters marked A and B in evidence.

(No objection; read in evidence.)

49 Q. Are these letters A and B correct and true?

A. I felt just as I wrote, then.

Q. You got to Galveston and discharged your cargo there?

A. Yes, sir

Q. And I understand you to say that there was some work going on on board the vessel there about the engine?

A. The men were busy in the engineer's department at Galveston.

Q. Anything more than common on steamers?

A. There was some iron work brought on board and the bill was brought to me, certified by Mr. Sherman, and I paid; I did not think it was as much as was wanted to be done, as I had told him to put everything in thorough order there.

Q. Was it not as much as you thought was needed to be done then?

A. I did not think it was, sir.

By the COURT:

Q. You say that there was not as much work done as you thought ought to be done?

A. The bills presented to me before we sailed did not amount to as much as ought to have been done by reference to the bills, and what the chief engineer told me was necessary to be done.

Q. If you do not know what was done, I don't see how you can form any judgment; all you mean is that the bills were not as big as you expected?

A. That is all.

By Mr. DONOHUE:

Q. My question is whether there was more work at Galveston than is usual on a steamer preparing to go to sea after having been on a voyage?

A. I cannot answer that question.

50 Q. Do you know Mr. Hunsberger, a local inspector at Galveston?

A. Slightly; I met him when we returned; I never knew him before.

Q. He is what is called a local inspector there.

A. I was informed he was; he was a stranger to me.

Q. Did you ask him to go on board and examine the vessel?

A. I think I did say something to him about it.

Q. Did he go?

A. I believe he did; I think I was on board when he came.

Q. Did he request you to notify him when the vessel would be ready for sea?

A. I believe he did, sir, say something about it; we were going up the street together; I saw him but a very few moments; he told me who he was.

Q. You think he did ask you to let him know when the vessel would be ready for sea; and upon your notifying him he would come and make a more thorough examination of the machinery?

A. I believe he said so.

Q. Did you give him any notification after that?

A. Not personally; I do not think I saw him again myself.

Q. The vessel left there again without your seeing him again?

A. I do not remember seeing him since that.

Q. That talk with him was after she returned to Galveston?

A. Just as I was stepping from the wharf after her return to Galveston, I met him.

Q. When you left Galveston you intended to go to Key West?

A. Yes, sir; we had to go there for coal.

Q. Did you undertake to make a present of some of your beef to a government vessel at Key West?

51 A. Some of the officers asked me for a piece of beef up at the hotel; I told them they could have it by sending for it.

Q. That is, some of the officers of a government vessel?

A. I think he was caterer for a mess there.

Q. Not your own officer?

A. No, sir.

Q. Do you recollect their taking out some beef to be sent?

A. No, sir; I do not; I recollect they were there early in the morning, and I think they took it.

Q. I ask you if you recollect beef being taken out and sent to them?

A. No, sir; I saw these officers on board next morning.

Q. Do you recollect what ship it was?

A. I do not, sir.

Q. Did not you yourself, at that time, at Key West, after the attempt was made to get the beef, say it was stinking?

A. I do not remember that I did.

Q Will you swear you did not?

A. I will not.

Q. Will you swear it was not stinking?

A. I will not swear.

Q. Was it not, in fact, beginning to taint?

A. That is a hard question for me to answer, because I did not know the condition of it then.

Q. You have been swearing to something about its condition; I ask whether it was not beginning to taint?

A. I had my suspicions about it.

Q. Were not your suspicions that it was beginning to taint?

A. I was told it was not.

Q. Did you not know that that beef was beginning to taint at that time?

A. I would not swear it was good nor would I swear it was bad.

Q. You were one of the persons interested in the beef.

A. I was very anxious to get it here safe.

Q. Did you not state in Key West at that time that it was beginning to taint or was tainted?

52 A. I might have said so, but I do not remember.

Q. Did you not say to Mr. Sherman, your chief engineer, that the beef stank, at Key West?

A. I may have said so but I do not remember that I did; I will not swear I did not, because I said a great deal about the beef being bad.

Q. Did you not say at Key West that it was all up?

A. Not that I remember.

Q. You will not swear you did not?

A. I will not swear I did not.

Q. Did you not say in Key West that you were very much worried about buying the ice, as you thought it was so much money thrown away?

A. I said in Key West that I would not buy the ice if the party in charge did not give me a written order to buy it.

Q. Now, will you not answer my question, whether you did not say it was so much money thrown away?

A. I may have said I feared it; ice was so very high there that I hated to buy it, and I thought we had enough when we left Galveston to see us home.

Q. After the steamer got back to Philadelphia, after the voyage was all over, did you have anybody to inspect the vessel?

A. We did, sir.

Q. Do you know Mr. Joseph L. Perry?

A. Yes, sir.

Q. Who is he?

A. A local inspector of boilers at Philadelphia, I believe.

Q. Did you get him to inspect her?

A. I think he was on board.

Q. Did not you or Messrs. Duncan & Poey get him to come on board and examine her?

A. I did not myself order any inspection.

Q. Did you know he was coming?

A. I did, sir; all of us knew that an inspector was coming.

Q. This was after the return and after this difficulty had taken place?

53 A. Yes, sir.

Q. And you will swear that you did not know at whose request he came?

A. I have not said that.

Q. At whose request did he come?

A. At the owners' I believe.

Q. What owners?

A. Duncan & Poey, I presume; or Mr. Sherman might.

Q. I do not ask you what might be—did you know the inspector was coming?

A. I heard they were coming.

Q. Who did you hear it from?

A. I do not remember.

Q. Did you hear it from Duncan & Poey?
A. I think I did.
Q. And you saw Mr. Perry on board?
A. Yes, sir.
Q. Making an examination?
A. I think he had made it when I saw him.
Q. Did he make a report?
A. He left the cabin saying that he would.
Q. Will you swear now you do not know that he did make a report?
A. I do not know; I heard he did.
Q. Who did you hear it from?
A. I think Mr. Sherman told me.
Q. Did you hear it from Duncan & Poey?
A. I do not know that I heard it from Duncan & Poey.
Q. Did you ever see that report that he made?
A. I don't think I ever read it.
Q. And don't know where it is?
A. I do not.

Redirect:

Q. Were these bills shown you for iron work on the boiler paid at Galveston?

A. Both of them in the engineer's department.

54 Bills marked F and G put in evidence.

Q. Did you pay these bills?

A. I think I did; the purser may have paid the small one, but I paid all the others; I think I paid them both.

Q. Did you undertake, at any time, to give directions as to what special repairs should be made, or work done on the engine and boiler?

A. Not specially, sir; only that it should be thorough, and the ship put in perfect order to return to Philadelphia.

Q. And to whom did you give these directions?

A. I requested the chief engineer to have everything done.

Q. I see that in one of these letters you speak of the vessel having been heavy going out.

A. Deep loaded.

Q. How did she compare, in that respect, with her voyage back?

A. She was much lighter coming home.

Q. In this conversation with Mr. Hunsberger, where you say there was something said about notifying him when the vessel was ready for sea, did you say that you would notify him personally, or send him notice?

A. I do not remember that I told him so; we had but a few moments' conversation.

Q. Will you give us, as near as you can, the substance of that conversation?

A. He told me who he was, and asked me why we had returned; I told him in consequence of blowing out the flues in our boiler; and there was not much more said, that I remember; we walked up the wharf, and he left me; I do not know that I knew he was the inspector when he asked that question; I found it out afterwards; I did not know the gentleman at the time that I first saw him.

Q. Do I understand that you do not recollect anything being said about your notifying him to come on board?

A. I cannot distinctly call to mind; he might have told me that.

Q. Did you send any notice to him?

55 A. Not myself, personally.

Q. Did you direct any one to give him notice?
A. I do not remember that I did.

Recross:

Q. Look at these four bills—one of Darrah & Elwell, dated October 2, 1872; bill of custom house, dated October 3, 1872; bill of James Finnessey, dated October 3, 1872; bill of D. S. Resley & Co., dated October 10, 1872; were these part of the repairs done to the vessel at Philadelphia?
A. Yes, sir; part of the work and outfit; the owners told me to get everything that was necessary that the ship did not have.
Q. By that you mean Woodhouse & Rudd?
A. Yes, sir.
(Mr. Donohue offers the four bills in evidence.
Mr. Benedict objects to the last three bills as not having anything to do with the boiler and engine. The last three bills are excluded.)
The first bill—of Darrah—put in evidence.

CHARLES HUGGINS, called by the libellants, sworn.

Examined by Mr. BENEDICT:

Q. What is your business?
A. I am a seafaring man.
Q. How long have you followed the sea?
A. I commenced going to sea in 1843, and followed it most of the time since then.
Q. Were you mate of the Francis Wright on the voyage to Galveston?
56 A. Yes, sir.
Q. Have you got your log of the voyage?
A. Yes, sir.
Q. Tell us how many delays there were on the voyage out, occasioned by the stoppage of the engine.
A. There were five.
Q. Can you give us the dates?
A. I do not know that I can swear to the dates exactly.
Q. Can you by referring to the log?
A. Yes, sir.
Q. Refer to the log.
A. The first delay was the day we sailed from New York—the 19th day of September; the next stoppage was the 7th of October; the next was on the 8th; the next was on the 12th; the next was on the 15th; the next was on the 17th.
Q. The first stoppage, what was that?
A. We stopped, I think, half a mile from Fort Columbus, going out.
Q. For how long?
A. She stopped half an hour.
Q. What was the occasion of the stoppage?
A. Want of steam.

By Mr. DONOHUE:

Q. Do you know of your own knowledge or what was told you?
A. I knew from what the engineer told me.
Q. Do you know, of your own knowledge, what was the occasion of it?
A. I did not know what else could have stopped her.

By Mr. BENEDICT:

Q. Were you on deck at the time?
A. Yes, sir.

Q. Were there any orders given from the deck to stop her?
57 A. No, sir.
Q. Was there any difficulty to have occasioned her stopping, outside of her boiler and engine?
A. No, sir.
Q. You did not yourself go down to look at the boiler and engine?
A. No, sir.
Q. Take each stoppage, one after the other, and give us the time of each, if you can.
A. The report of the log is that on the 7th——
Mr. DONOHUE. Do you recollect this thing yourself?
A. I recollect I put them on the log; it is all my own handwriting; the record of the log is that, on the 7th, at 1 o'clock p. m., stopped the engine to key up; the time is not specified. On the 8th, she stopped at 10 a. m. (sea time), and at 3.30 p. m. started again.
Q. Do you know what that stoppage was caused by?
A. To make repairs on the boiler and engine.
Q. Do you state that of your own knowledge or were you told?
A. I can say from my own knowledge that that was what she stopped for, for there was no other cause. 12th of October, at 8.30 a. m., stopped the engine to plug tubes. At 11.05 a. m. started again. On the 15th of October stopped the engine at meridian until 1.30 p. m., there not being steam sufficient to propel the ship. That is what the log reports. On the 17th stopped the engine at meridian, and started at 2 p. m. again.
Q. What was the cause of that stoppage?
A. Repairs to her boilers.
Q. On the voyage out, while the engine was in motion, were you ever down in the engine room?
A. Yes, sir.
Q. Did you ever see any indications of a leak in the boiler?
A. I could not see indications of a leak when in the engine room.
Q. Were you ever where you could see the boiler?
58 A. Yes, sir; I could see the leaks from the deck on looking down into the fire room.
Q. What indications of leak did you see?
A. Water pouring over the furnace door.
Q. How frequently?
A. Whenever these stoppages were made, or previous to these stoppages being made; sometimes the ship would be under such a low head of steam that I would naturally suppose there was a difficulty of that kind, and would look to see if there were any indications of it, and in that way would discover that the tubes were leaking.
Q. You say that the tubes were plugged?
A. Yes, sir.
Q. Do you know anything of the plugging of tubes?
A. I have a general idea of how they are plugged; I have seen plugs made, but I have never seen them driven in.
Q. What sort of plugs are they?
(Objected to; excluded.)
Q. Are you acquainted or not with the kind of plugs used to plug boiler tubes?
A. Yes, sir.
Q. Did you ever see a plug in a boiler tube?
A. No, sir.

Q. Do you recollect seeing, in New York, before the vessel sailed, on board of that vessel, a quantity of wooden plugs?

A. I do not.

Q. Did you ever endeavor to go down into the boiler room or engine room on the voyage out?

A. Yes, sir.

Q. Were you ever ordered out by Mr. Sherman?

Q. I never was ordered out of the engine room.

Q. How as to the boiler room?

A. Or the boiler room.

Q. Were you ever forbidden to go in?

A. No, sir.

59 Q. Were you ever forbidden to go anywhere in the engineer's department?

A. No, sir.

Q. You remained on board while the vessel was in Galveston?

A. Yes, sir.

Q. Do you know what work was being done on board the vessel at that time?

A. I do not know what particular work the engineer was doing.

Q. Was there work being done in the engineer's department?

A. Yes, sir; I saw tube rods for plugging tubes brought on board.

Q. Tell us what the stoppages were after the vessel left Galveston.

A. November 1, 5 p. m., the engine was stopped; started ahead again at 5.30 p. m.; stopped the engine at 6.30 p. m.; started again at 10 o'clock the next morning.

Q. What was that for?

A. She had blown out forty-nine tubes.

Q. Were you in the engine room or boiler room during any of that period?

A. No, sir.

Q. Did you see indications of a leak in the boiler?

A. Yes, sir.

Q. What?

A. I saw the water pouring out of the tubes, pouring out over the furnace door, or running down over the furnace door—a leak.

Q. What was the weather from the time you had left Galveston Bar until this stoppage?

A. There was a fresh breeze, I believe; I can tell by referring to the log:—"Fine weather; fresh breeze; northeast wind."

Q. Was there any condition of the wind or weather, or waves that should have injured the engine or boiler if in proper condition?

60 (Objected to on the ground that the witness is not shown to have experience.)

Q. What experience have you had in the navigation of steamers?

A. I was on a steamer in 1853; since then I have been in a good many steamers.

By Mr. DONOHUE:

Q. What vessel were you in in 1853?

A. In the steamer Northern Light.

Q. Was that a tubular boiler?

A. I think she had a flue boiler, but I am not positive; I was also on the Star of the West; I think she had a tubular boiler.

Q. What other steamers?

A. I was on the steamer Kensington during the war; I commanded her; she was a propeller.

Q. What size?

A. I think between one thousand and twelve hundred tons.

Q. What kind of a boiler had she?

A. She had a tubular boiler, I believe.

Q. Do you know?

A. I do not positively; I am rather sure she had.

Q. What other vessels?

A. I was executive officer of the sloop-of-war Monongahela; she had Martin's tubular boiler; I was also on the Admiral, afterwards called the Fort Morgan; I was executive officer of her.

Q. What had she?

A. I think she had a tubular boiler.

Q. Do you know that she had?

A. No, sir; I was executive officer, and did not make it my business to examine.

Q. You did not examine either?

A. No, sir; I did not consider it my business to examine them.

Q. You never have been engineer?

61 A. No. sir.

Q. Or connected with the engineer's department?

A. No, sir?

By Mr. BENEDICT:

Q. Was there any condition of the wind, or water, or waves, that should have injured the engine and boilers if in proper condition?

(Ojected to on the ground that the witness is not competent to answer the question; objection sustained.)

Q. Was there anything unusual in the condition of the wind and waves during that time?

A. No, sir; the log book reports fine weather.

Q. Is that the fact?

A. Yes, sir; I am willing to swear to what the log book says.

Q. Have you ever been through such weather as that on board a steamer without receiving any injury to the boiler or tubes?

(Objected to; excluded.)

Q. Did you see what repairs were done on the boilers at that time?

A. No, sir.

Q. When did you get back to Galveston?

A. We sailed from Galveston in the morning, and returned the next day to the wharf, I think about six o'clock in the afternoon; we sailed from Galveston on the 1st.

Q. Give the hours when you sailed, and when the engine stopped, and when you started again, and when you got back.

A. At 10 p. m. (sea time), pilot came on board and cast off from the wharf; 1 p. m., the pilot left; 5 p. m., the engine stopped; started at 5.30; stopped again at 6.30 p. m.; at 10 o'clock in the morning started the engine and stood back for repairs; through the night drifting

62 southwest; 3 p. m., took pilot on board; 4.30 p. m., made fast to the wharf.

Q. Did you notice what was being done on board your vessel after you returned, with reference to the boiler?

A. No, sir.

Q. Did you have anything to do with reference to ordering the making of repairs?

A. No, sir.
Q. Who had charge of that?
A. The chief engineer, I presume, by orders of the captain.
Q. After you sailed from Galveston the second time, give us the stoppages that occurred—the dates and times and cause.
A. The 18th of November, stopped at 2 p. m. until 9.45.
Q. What was the cause of that?
A. Want of steam.
Q. Do you know whether the boiler leaked at that time?
A. No, sir; I do not; the log says that the ship was drifting with the current of the Gulf, not having steerageway.
Q. Give the next stoppage.
A. November 21st, 11.30 a. m., stopped the engine to plug tubes; 4 p. m. started the engine; November 22d. stopped 4.30 p. m., the engineer reported steamer obliged to plug a tube before he could start the ship from Delaware City.
Mr. Donohue objects to what the engineer reported.
Q. Have you stated all the stoppages?
A. Yes, sir; we started from Delaware City for Philadelphia at 6 p. m.
Q. Was there anything that detained you at Delaware City?
A. We stopped to coal.
Q. After you got the coal on board?
A. That the captain could tell better than myself.
Q. During these stoppages on your voyage home did you notice whether there was any leak on the boiler?
A. Yes, sir; it was generally my practice when they reported
63 the tubes being plugged to look down the fire room to see if I could see the cause.
Q. Were there any other times besides the times of actual stoppage when the ship made little headway?
A. Yes, sir.
Q. At those times did you notice whether there was any leak in the boiler?
A. I did at times, but I did not know at all times; it was necessary to stop sometimes, but we could not stop on account of the weather as long as we could keep steerageway on the ship.
Q. On account of what weather?
A. Bad weather.

Cross examined by Mr. DONOHUE:

Q. You spoke about the engineer making the repairs or working on the boiler; that is customary for all that to be done under the engineer's directions?
A. It always has been in every ship I have been in.
Q. Can you tell me, without referring to the log, any of the occasions on which these stoppages took place?
A. Yes, sir.
Q. Where?
A. The first time after we left Galveston, particularly.
Q. That you recollect without referring to the log?
A. Yes, sir.
Q. You swear at that time there were 49 tubes blown out?
A. I meant to be understood that I was so informed.
Q. Then you do not mean to swear there were 49 tubes blown out?
A. I will swear the engineer told me so.

Q. I do not ask what any one told you; do you know there were 49 tubes blown out?

A. Not by my observation; I did not mean to be so understood.

Q. Did you examine or count the tubes at all?

A. No, sir.

64 Q. Did you see any tubes at all?

A. No, sir.

Q. Never made any effort to count the tubes?

A. I could not count them.

Q. You could not see the tubes?

A. No, sir.

Q. The tubes were not open, looking down into the engine room?

A. No, sir.

Q. You never at any time looked at them?

A. No, sir.

Mr. Donohue asks that the witness' statement in regard to the number of tubes be stricken out.

The COURT. It is. I have nothing of that kind on my notes.

Q. When do you say you stopped at Galveston, or after leaving Galveston?

A. We stopped at 5:30; I think we stopped at 5 o'clock and started again at 5.30, and then stopped at 6:30; I cannot trust to my memory.

Q. You cannot testify exactly without referring to the log?

A. I would not like to—not exactly; it is impossible to carry all the records of the ship in my memory.

Q. You say you saw work being done around the engine at Galveston?

A. I knew there was work by the appearance of the men.

Q. From the noise and appearance of the men you knew there was work going on?

A. Yes, sir, that is why I knew; I did not go down.

Q. Did you ever see a tube plugged?

A. I did not.

Q. You say you saw rods for plugging tubes; do you know, except from hearsay, what they were for?

A. No, sir.

Q. When you swear that rods for plugging tubes came on board you mean to swear rods that you were told were for plugging tubes?

65 A. Yes, sir.

Mr. Donohue asked to have the testimony as to the tube-rods stricken out.

The COURT. I have not got it down.

Q. Do you know what tube rods are?

A. I know that similar rods are used for that purpose.

Q. From what you have been told?

A. I never saw one put in.

Q. I ask you the distinct question—do you know anything about the use of those rods, except what you have been told?

A. No, sir.

Q. Therefore, when you said you saw tube-rods, you only meant from what people told you?

A. Yes, sir, the general understanding,

Mr. Donohue asks to have the expression of the witness, about tube-rods, stricken out. So directed.

Q. (By the COURT.) You heard that thing called a tube-rod?

A. Yes, sir, I have seen them on board the ship, called tube-rods.

Q. Do you know who brought them on board?

A. No, sir.
Q. Do you know who ordered them?
A. Not from my own personal knowledge. I know certain circumstances connected with the rods.
Q. Do you recollect the day they came on board?
A. Not the precise day.
Q. You have no memorandum of it?
A. No, sir.
Q. Do you know how many there were?
A. No, sir, I did not count.
Q. Did they all come at once, or at different times?
A. That I cannot say.
Q. It is always customary in steam vessels preparing for a voyage, or that have been on a voyage, to have work going on around the engine and boiler?
66 A. Yes, sir, if repairs are necessary.
Q. Did you ever know an instance where a vessel was preparing for a voyage where there was not work done round the boiler and engine?
A. I don't think I ever did.
Q. Speaking about the first time she stopped, going from here, do you personally know who stopped the engine?
A. No, sir.
Q. Nor of your own knowledge for what reason it was stopped?
A. No, sir, any more than I can judge.
Q. Where were you standing on board of her when the engine stopped?
A. I think I was standing by the pilot house, near the pilot; I remember the pilot speaking to me at the time.
Q. Have you any distinct recollection now, that you can swear from, where you were standing?
A. I would not swear positively; I was standing by the pilot house.
Q. Do you know whose watch it was?
A. It was everybody's watch—getting ready for sea.
Q. And you attended to that duty?
A. Yes, sir.
Q. Your attention was called to the stoppage by the pilot speaking to you?
A. Yes, sir.
Q. She had stopped?
A. Yes, sir; and was drifting with the current—flood tide.
Q. That is all, of your own knowledge, that you know about it?
A. Yes, sir.
Q. Can you tell me the next time she stopped?
A. The next she stopped was the 7th, when she keyed up.
Q. Do you recollect that without the log?
A. No, sir.
Q. Do you know of your own knowledge what she stopped for?
67 A. No, only it is reported so in the log.
Q. I did not ask you what is reported. Do you know of your own knowledge what she stopped for?
A. Not positively.
Q. Do you know more than from report?
A. I cannot necessarily know anything, except from report, with regard to the engine; I was not the engineer.
Q. Why the engine stopped at that time, you only know from report?
A. That is all.

Mr. DONOHUE. That I asked to have stricken out.

The COURT. He read that out of the log.

Mr. DONOHUE. If his direct testimony was what he read out of the log, I ask to have it all stricken out.

The COURT. Then I strike it out; I understood him to be reading from the log.

By Mr. BENEDICT:

Q. Did you keep the log on that voyage?

A. Yes, sir.

Q. Is it the duty of the mate of a steamer to keep the log?

A. It is, sir.

Q. Did you make these entries at the time—on the day?

A. Not every day; sometimes the weather would be such that I could not write up the log book; I wrote it on the slate, and copied it from the slate.

Q. The entries made by you?

A. Yes, sir; the entries are all made by me, except on the slate; the second mate keeps part of the log on the slate during his own watch; he makes memorandum of his part of the watch.

Mr. BENEDICT. I offer in evidence the entries in the log book.

Mr. DONOHUE. I object.

By Mr. DONOHUE:

Q. The entries in the log are from the slate, part of which you make, and part of which you do not make?

68 A. Yes, sir.

By the COURT:

Q. Who copied all this into the log?

A. I did, sir.

Q. Are the entries in the log in your own handwriting?

A. Yes, sir.

By Mr. DONOHUE:

Q. One-half of the entries are made by the second mate on the slate?

A. Yes, when at sea.

Q. And these entries are only a copy of what are made on the slate; during one-half the time, when at sea, this log is a copy of entries that the second mate made?

A. Yes, sir; a copy of his log and of my own.

(Mr. Donohue objects to the admission of the entries.)

The COURT. You must take them up by detail.

By Mr. BENEDICT:

Q. The stoppage of the 19th of September—there is no entry of that in the log?

A. No, sir.

Q. Is there anything to distinguish which was your watch and which was the second mate's watch on the log book?

A. No, sir.

Q. Did you enter in that log correctly the entries which were made on the slate?

A. Yes, sir.

Q. In every case?

A. Yes, sir.

Q. Did you make correctly on the slate the entries that you made yourself?

A. Yes, sir.

Q. What became of the entries on the slate after you made them?

A. After they were copied they were wiped off the slate.

69 By Mr. DONOHUE:

Q. You entered on the slate what was reported to you, as well as what you knew yourself?

A. No, sir; I entered my own observations, and occasionally the second mate would report to me.

Q. When you entered on the slate why the vessel stopped, you only knew that by report?

A. Yes, sir.

Q. Then you did enter on the slate what was reported to you; when you were making entries on the slate about the engine, you did it from report?

A. Yes, sir; that is what I wish to be understood.

Mr. DONOHUE. Then I object on the ground that the reports, so far as the engine was concerned, were made from information.

By Mr. BENEDICT:

Q. In any case where a report was made to you about the condition of the engine, who was it made by?

(Objected to on the ground that it is getting the declarations of other persons as to matters of which the witness knows nothing; objection sustained.)

Mr. Benedict asks to have the witness stand aside while he proves by the second mate the correctness of the entries made by him.

(Objected to on the ground that it is not material whether he made correct entries or not.)

Mr. BENEDICT. Do I understand that your honor strikes out all the direct testimony of the witness? There is much of his testimony to which he swears positively.

The COURT. I will strike out what he gave from the log.

Mr. DONOHUE. Perhaps it would be better to let me go on with the cross-examination, and have the witness state what he does know
70 of his own knowledge, and then I will move to strike out all he does not know of his own knowledge.

The COURT. You can do that.

By Mr. DONOHUE:

Q. I had got through asking in regard to the time of the stoppage off Galveston, and I understood you to say you did not count the number of tubes that were blown out, and of your own knowledge you did not know at any time how many tubes were blown out?

A. No, sir; not from my personal observation.

Q. And the only way you know it is from statements made to you?

A. Yes, sir.

Q. You told me the first time you stopped off Galveston. Tell me when you started again, and of your own knowledge when anything occurred in regard to the engine and boiler?

A. I cannot say from my own knowledge.

Q. Can you now state, from your own knowledge, any time when anything occurred to the engine or boiler after leaving Galveston the second time?

A. I do not know from my own knowledge; I do not know from what I saw.

Q. And therefore cannot, of your own knowledge, say, but only from hearsay; is that so?

A. I suppose that is so.

Q. Is it not the fact?

A. I do not know how a man is to know a thing that he is not experienced in; I know the ship stopped, and I was told the cause of it.

Q. I want to know if you can, from your own knowledge, tell us anything that occurred, either to the boiler or engine, after leaving Galveston the second time?

A. No, sir.

Q. Of your own knowledge, can you now tell me any date or day when you looked and saw the water coming over the furnace door?

71 A. I do not remember dates; I can remember the water pouring over the furnace door.

Q. Is there in your log-book any entry of yours ever having seen water pouring over the furnace door?

A. No, sir.

Q. You spoke about its pouring over; was there anything more at any time that you ever saw except dropping?

A. Yes, sir; I saw a stream.

Q. How large a stream?

A. I cannot define it.

Q. How was the stream running?

A. Trickling down the iron.

Q. Down the face of the boiler?

A. Yes, sir.

Q. More than one stream?

A. Yes, sir.

Q. How many?

A. I did not count them; I cannot tell how many.

Q. Will you swear there was more than one at any time?

A. Yes, sir; I have seen more than one trickling.

Q. You will swear that you saw more than one so trickling down at one time?

A. Yes, sir.

Q. Can you tell me, at any one time, that you saw more than one trickling down?

A. I cannot make mention of the date.

Q. You have mentioned times when the stea mer was stopped; what you have stated in your direct examination, as to the way she stopped, is from hearsay?

A. Yes, sir.

Q. I understood you to say that you were down in the fire-room?

A. I never was in the fire-room at all.

Q. That is where the boiler is?

A. Yes, sir.

Q. And no one stopped or prevented you from going there?

A. No, sir.

72 Q. Did you go from here to Philadelphia in that vessel?

A. Yes, sir.

Q. What have you been doing since you left this vessel?

A. I have not been doing anything, sir.

Q. Did you come round here in her when she came to New York?

A. No, sir; I left her in Philadelphia.

Q. This log book you spoke of, where did you get it?
A. I got it in the court room this morning.
Q. From whom?
A. I do not know the person who brought it in; Captain Denison handed it to me.
Q. What had you been doing before you went on board this vessel?
A. I brought the steamer Firefly from Key West for Captain Denison; I arrived there on the 26th of February, I think; I went out there to bring her home, and I got home with her to Philadelphia, I think, on the 2d of June.
Q. What vessel were you in before that?
A. In command of the San Francisco, in William H. Webb's employment, two years ago this winter; I think I was in her five months—September to February.
Q. Are you licensed now?
A. I have not a license; I was not asked for one, and I did not get one.
Q. You were not licensed when you went out on this vessel?
A. No, sir.
Q. You knew Captain Denison?
A. Yes, sir.
Q. And he knew you?
A. Yes, sir.
Q. Did you have one when you went on the Firefly?
A. No, sir.

By Mr. BENEDICT:

Q. You stated you saw the boiler leaking on several occasions on the voyage out from Philadelphia to Galveston?
73 A. I do not know that I said positively at what times. I have seen it at times—more than on one occasion.
Q. Did you ever see it on any occasion other than the days when the entries are made in the log book in reference to the engine needing repairs?
(Objected to on the ground that the witness states he cannot recollect the dates.)
The COURT. If the witness can recollect the dates let him say so.
The WITNESS. No, sir; I would not swear as to the dates.
The COURT. If you can positively remember making a particular entry at the same time that you saw the leak, you can say so.
A. I don't recollect as to the dates. I do not trust to memory. I always put it in the log book.

By Mr. BENEDICT:

Q. In the first place, can you remember whether the occasions when you saw the boiler leaking were days when you made entries in relation to the engine, or on other days?
A. It is my impression that it was on these days, but I cannot say positively. To the best of my recollection it was at that time.
(Objected to.)
Q. When you made the entry on the 8th in the log book did you see water leaking over the furnace door?
(Objected to.)
A. I can say it was on some of the days when it is reported in the log book that the ship stopped for repairs, but I cannot say which. I can say it was on one of those days that I noticed the leaks, but I cannot say which day particularly.

74 By the COURT:

Q. Can you state anything about the time when you saw these boilers leaking?

A. No, sir; not positively with regard to the dates.

Q. With regard to your doing anything else?

A. No, sir.

By Mr. BENEDICT:

Q. With reference to your making any entry in the log?

A. I can only take for granted the log is right. If I put it down that day, it is the date it occurred.

The COURT. I must exclude it; it is too loose.

Mr. BENEDICT. Do I understand that the entries of the log are excluded as to the time of the stoppage, or only as to the cause?

Mr. DONOHUE. I object as to both.

The COURT. I understand the witness to say that he remembers the fact of the stoppages.

By Mr. DONOHUE:

Q. Aside from the log book, have you any recollection of any of the occurrences in it?

A. I recollect of their occurring, but I do not recollect in regard to the dates independent of the log book.

Q. Or the length of time either of the stops took?

A. No, sir; not independent of the record.

Mr. BENEDICT. I submit that makes the record evidence, and I offer the record in evidence.

By the COURT:

Q. Do you say, independent of the record, that you cannot recollect the fact of the stoppage?

A. I can recollect the fact of the stoppage, but not the date nor the length of the stoppage. Yes; I can recollect the time very nearly when we stopped off Galveston. We stopped about six o'clock in the afternoon, and did not start again until ten o'clock in the morning. With regard to the others I cannot recollect as distinctly—not distinctly enough to swear to it.

75 Mr. BENEDICT. I offer the entries in the log on these days, the 8th, 9th, 12th, and 17th, as to the dates and times of the stoppages; as much of the entries as show the dates of the stoppages and the duration.

Mr. DONOHUE. I object generally as not being evidence; secondly, I object to any more of the entries being put in than simply to give the date and time.

The COURT. That is all that is offered; so much of the entries as gives the date and duration. Counsel had better read off what he offers.

Mr. BENEDICT. I offer these entries: "On the 8th of October a. m., stopped the engine. October 9th, at 3.30 p. m. (sea time), proceeded under steam and sail. October 12th, 8.30 a. m., stopped the engine. 11.05 a. m., started engines. October 15th, engine stopped at meridian until 1.30 p. m. October 17th, stopped engine (it is the first entry in the log and means noon); at 2 p. m., started engine."

(Mr. Donohue renews his objections.)

By Mr. DONOHUE:

Q. One-half of all the entries in the log book were made from the slate entries made by the second mate?

A. At sea the second mate makes the entries on the slate of his own watch.

Q. Are one-half of all the entries in the book, while at sea, taken from memorandum made by the second mate?

A. Yes, sir.

Q. Can you tell now which was his watch and which was yours?

A. It is impossible to say which was the mate's watch and which was mine.

Q. You cannot distinguish which was your watch and which was his?

A. Perhaps I could by going back and ascertaining when my watch commenced when the ship went to sea.

Q. Can you tell me now by looking at this log?

A. No, sir.

76 By Mr. BENEDICT:

Q. Can you tell by examining the log?

A. I think I can.

By Mr. DONOHUE:

Q. You cannot now tell?

A. I cannot tell by anything written in the log.

Q. And you cannot now tell me, without doing something else, which part refers to your watch and which to the second mate's?

A. I cannot without looking back to see which was my watch when we started, and taking the alternate watches.

The COURT. I must exclude it as it stands.

Mr. BENEDICT. I wish leave to withdraw this witness and examine the second mate on this subject.

The COURT. Better go through with this witness and ask all you want from him.

By Mr. BENEDICT:

Q. Will you say, if you can find out, which of these entries was made in your watch?

A. It will take me some time to do it, and I do know then that I can be correct about it.

By the COURT:

Q. Did you ever change or swap watches?

A. I am not positive but we did in coming out of Galveston. I think the second mate asked to take my watch, or I said I would take his watch. I think we changed; so that I would not be able to identify the watch after all, even by going through the book, when I come to recollect this circumstance.

Q. But you do swear that every entry that you made during your watch was correct?

A. Yes, sir; to the best of my knowledge and belief. You are aware that I put down these entries from report, many of them.

Q. But I speak of the entries of the stoppages; these were not entered on report?

77 A. No, sir; with reference to these stoppages I knew them to be correct when I made the entry on the slate; I was very particular about it.

Q. Did you or did you not make the entries correctly from the slate into the log?

A. Yes, sir; I endeavored to do it.

Q. Did you do it?

A. I did as near as I could, and I suppose I can copy as correctly as any one.

By Mr. DONOHUE:

Q. You spoke of the trickling or running down of the water; did you ever tell any one on board that you saw it?

A. Yes, sir.

Q. Who?

A. I remember taking some person with me to show it.

Q. Do you recollect any one that you told?

A. Yes; I told Captain Denison to go with me and look at it.

Q. Did he go to look at it?

A. I believe he did.

Q. Is that your best recollection?

A. Yes, sir.

Q. Are you pretty positive of it?

A. I am pretty positive it was him.

Q. Did you tell any one else?

A. I will not swear positively I did, although I may have done so.

Q. Was that before you got to Galveston?

A. I cannot say that it was.

Q. Did you lose your way going into Galveston?

A. No, sir.

Q. Did you enquire of a schooner how Galveston bore from you?

A. I asked a schooner by the captain's order.

Q. What did you ask her?

A. How Galveston bore.

Q. What kind of a day was it?

78 A. Fine and pleasant weather; Galveston bore southwest thirty-five miles; that was the report of the captain of the schooner.

By Mr. BENEDICT:

Q. How did Galveston bear, according to your understanding?

A. We had had very heavy weather, and our chronometer got capsized, our patent log was lost overboard, and the distance run by the ship at different times was so uncertain that it was almost a matter of impossibility to keep dead reckoning, so that we could not be positive really as to our position at the time that we ought to have made Galveston.

Q. And at that time how much were you out?

A. At the time we spoke the schooner we were thirty-five miles from Galveston, bearing southwest.

Q. Were you out of your way at that time?

A. I do not remember exactly; we had not worked up our position; this was before 12 o'clock, and our captain had not worked up his position at that time; during the night we struck soundings, and when we struck soundings the captain thonght that he was nearer to land than it appeared to be; he thought the land did not run off so shoal for the distance it did; we were in shoaler water than we ought to have been according to our reckoning.

Q. Did you talk with any one else about the boiler leaking?

A. I presume I did.

Q. Do you remember talking to Mr. Sherman?

A. I do, sir.

Q. More than once?

A. Yes, sir, on board the ship, and I recollect talking to him one morning going ashore in Galveston.

Q. Do you recollect, at Florida Reefs, going to the chief engineer and getting him out of bed, or calling him while he was in bed, to give you instructions how near you could go?

79 A. I do not remember any such circumstance.

Q. Will you swear it did not occur?

A. I do not remember any such circumstance.

JOHN A. LOCKHART called by the libellants.

Sworn and examined by Mr. BENEDICT:

Q. What is your business?

A. I am a seaman by profession.

Q. How long have you followed the water?

A. About nineteen years.

Q. In what capacity?

A. From before the mast up to mate, and I have been master of a small schooner.

Q. What experience have you in steamers?

A. About twelve years.

Q. In what capacity?

A. From third mate to mate.

Q. Were you second mate in the Francis Wright on this voyage?

A. I was, sir.

Q. Before that voyage was it your business during your watch to make entries on the slate?

A. It was.

Q. Did you keep those entries correct?

(Objected to; admitted.)

A. I did.

Q. What became of those entries on the slate after you made them?

A. They were copied by the mate into the log-book.

Q. What became of them after that?

A. The slate was rubbed out.

Q. Did you examine the log-book yourself after the entries were made?

A. I never looked at it until that day.

Q. Did you keep any log of your own?

A. I did.

80 Q. Have you that?

A. I have not, here.

Q. Where is it?

A. In Philadelphia.

Libellants' counsel offers in evidence the entries mentioned before.

(Mr. Donohue objects.)

The COURT. I will admit them as far as stating the stoppages and the duration.

Q. Did you see any leak in this boiler in the passage out from Philadelphia to Galveston?

A. No, sir; not in the passage out.

Q. Do you recollect the time she stopped after you left Galveston?

A. Yes sir.

Q. You know the vessel was stopped?

A. Yes, sir; she stopped in my watch.

Q. Was you in the engine or boiler room before the time of stoppage?

A. I think not, sir; yes, sir; I was down during the night in the engine room.

Q. Not in the boiler room?

A. No, sir.

Q. Can you tell what work there was doing in reference to the engine or boiler?

A. I cannot swear to it.

Q. Do you recollect seeing on the vessel, in New York, before she sailed, a quantity of wooden plugs?

(Objected to; excluded.)

Q. When did you join the vessel here?

A. The day before she sailed.

Q. Do you recollect a carpenter coming down to the vessel before she sailed?

A. Yes, sir.

Q. Do you know what he came down there for?

(Objected to.)

81 Counsel for libellants offer to show that a carpenter came to this vessel in New York, and requested of the person put in charge of the vessel by her owners to show him where he would get the size of the plugs; that the ship keeper directly endeavored to hush up the carpenter, to prevent this witness hearing the conversation, and instead of taking the carpenter on board the ship took him away from the ship, and the witness afterwards found on board the ship, in the engineer's department, in a barrel, a large quantity of wooden plugs, shaped for use to plug boiler-tubes; also, that the vessel, before this time, had not been in use for a long period.

(Objected to on the ground that the statement of the man said to be a carpenter, and of the man said to be the ship keeper, who is not named, is not evidence against this ship; that what the witness found on board the ship is not evidence material to the suit. Objection sustained.)

Cross-examined by Mr. DONOHUE:

Q. Who hired you on board this vessel?

A. Captain Henry Denison.

Q. Did you come on from Philadelphia with the mate?

A. No, sir.

Q. Who came first?

A. I did; or rather I was in New York on leave of absence at the time that Captain Denison came on.

Q. Who got on the vessel first, you or the mate?

A. I was on board of her the morning before she sailed, before the mate.

Q. What time did you get on board of her?

A. Somewhere about eight o'clock; it might have been between eight and nine.

Q. What time did you leave her on leave of absence?

A. I left on leave of absence at Philadelphia.

Q. Did you stay by her from the time you went on board in the morning, or did you leave her?

A. I was back and forth all day, and stayed on board all night, and went to sea the next morning.

82 Q. The vessel was in charge of Captain Denison?

A. Yes, sir; and the pilot.

Q. When the pilot left she was in charge of Captain Denison?

A. Yes, sir.

Q. He was master and commander?

A. Yes, sir.

Libellants' counsel offers in evidence the following entries in the log:

November 1.—At 1 p. m. the pilot left the ship; 5 p. m. engine was stopped; started ahead at 5.30 p. m.; stopped the engine at 6.30 p. m.; 10 a. m., started the engine; wore ship to run back to Galveston; through the night drifting southwest.

November 7th.—7 a. m., the pilot came on board; cast off from wharf and proceeded to sea.

November 14.—At 3 p. m. went alongside of the wharf at Key West.

November 15.—At 2.30 p. m. cast off from the wharf at Key West and went to sea.

November 18.—At 2 p. m. stopped the engine; from 2 p. m. until 9.45 ship was drifting with the current of the gulf, not having steerage-way; at 9.45 the engine was started, and ship proceeded upon her course.

November 21.—At 11.30 a. m. stopped engine.

November 22.—At 4 p. m. started engine (that is, the same day, only 4½ hours' difference).

November 22.—At noon, came alongside of the wharf at Delaware City and made fast.

November 23.—At 6 a. m. started for Philadelphia, and at 9.30 a. m. hauled alongside the wharf and made fast.

(Mr. Donohue objected on the ground that no proof has been made which renders the entries competent evidence.)

The COURT. Do you understand that they stand in any different position from the other four entries?

Mr. DONOHUE. No, sir; I do not.

83 Entries admitted.

JOHN A. LOCKHART recalled by Mr. Benedict.

Q. Did you see any leak in the boiler on the way home?

A. Yes, sir.

Q. Do you recollect when?

A. The first time, I think, was on going into Key West—the day we went into Key West.

Q. What did you see?

A. Water running from the connection-door down over the furnace-door.

Q. To what extent?

A. Quite a large quantity of water.

Q. How did you happen to see it?

A. I happened to be passing the door that leads down to the fire-room from the upper deck.

Q. Did you see it on any other occasion than that?

A. After we arrived in the Delaware River.

Q. What did you see then?

A. I saw water again pouring from the connection-door; that was after we left the dock on Saturday, and were going up again on Sunday; we had been up to Philadelphia.

Q. This was after you came back from throwing over the beef?

A. Yes, sir.

HENRY DENISON recalled by Mr. Donohue.

Q. Did you give us the name of the vessel in which you say beef had come once before?

A. The steamer Firefly I referred to.

Q. When was that?

A. I think she arrived the 16th of August, 1871, in Philadelphia.
Q. She had left New Orleans and went to Rockport, Texas.
A. Yes, sir.
84 Q. And from there to Philadelphia?
A. Yes, sir.
Q. Did she ever go again?
A. No, sir.
Q. Was that the vessel that brought up and got into trouble at Key West?
A. Yes, sir.
Q. What voyage was she on then?
A. She was going for another load; she did not get beyond Key West.
Q. That voyage was in 1871, and ended in August?
A. I think she arrived in August, 1871.
Q. Were you captain of that vessel?
A. No, sir; the captain was Thomas P. Corson.

HENRY I. HARTLEY called by the libellants.

Sworn, examined by Mr. BENEDICT:

Q. Where do you reside?
A. In Philadelphia.
Q. What is your business?
A. Practical boiler-maker.
Q. Who are you engaged with there?
A. I am superintendent of the boiler department at Fort Richmond Iron Works—I. F. Morris & Co.
Q. Is that a large or small concern?
A. It is a large concern; it is classed among the largest in Philadelphia.
Q. How long have you been such superintendent?
A. The first of March will be seven years.
Q. Did you make an examination in Philadelphia of boiler and boiler-tubes of the steamer Francis Wright?
A. I did, sir.
Q. When?
A. It was on Tuesday, the 26th of November, I think.
Q. At whose request?
A. At the request of S. & J. M. Flanagan.
Q. What did you examine particularly or direct your attention to?
A. The tubes in particular.
85 Q. Please state in what condition you found the tubes.
A. I found they had been leaking; I found a number of them stopped up.
Q. Do you mean you found a number that had been leaking, and a number of others that had been stopped up?
A. I mean to say that those that had been stopped up had been leaking.
Q. What is the usual mode of repairing leaking tubes when you do not plug them up with rods and washers?
(Objected to.)
Libellants propose to show that there were a number that had been repaired by a tube extender.
The COURT. Prove first the condition of the tubes.

Q. State the condition of the boiler tubes.

A. Twenty-six were stopped up with washers and rods; I presume they were plugged inside; two out of the twenty-six had the wooden plugs exposed, and were without washers and rods.

Q. The washers and rods were in twenty-four?

A. Yes, sir.

Q. Did you examine the other tubes to see whether they had been repaired?

A. It would be impossible to tell if they had or not without it had been done very recently.

Q. How do you usually repair tubes?

(Objected to.)

A. I looked at all of them; the end parts of the tubes were exposed; I could not tell the condition of the tubes inside.

Q. Could you tell whether any of the others had been repaired besides these twenty-six?

A. No, sir.

Q. Where did you go to examine them; did you go into the boiler?

A. I went in the back connection, generally termed the back box; there the back end of the tubes are exposed.

86 Q. Did you examine any part of the boiler independent of the tubes?

A. I took a general survey of the exterior; I saw on one side of the boiler (I think the port side), about half way back; there had been a patch bolted on, which gave evidence of there being a leak there; I could not tell to what extent; it had an accumulation of salt around it.

Q. Tell us whether it is safe or proper to go to sea with boiler tubes plugged up as you saw those twenty six.

A. Well, if they are stopped up from their leaking, it is pretty conclusive that there is a weakness there, and I should not consider it safe to go to sea with a boiler in that condition.

Q. Suppose there are boiler tubes that are stopped up, would that in itself suggest to a practical mechanic or engineer that there was weakness in the rest of the tubes?

(Objected to.)

A. In sea-going vessels running in salt water, the tubes are liable, say after two years' running, to give out at any time; they generally want renewing after that length of time; a great deal depends on how the boiler has been kept—what kind of water she has been running in, and also the nature of the material of which the tubes are made.

Q. What should be done when boiler tubes are stopped up in that way?

A. When the tubes give out, that is the only thing that you can do with them—to stop them up.

Q. If you have a boiler in that condition, what should be done with it?

A. With defective tubes, take them out and put in new ones, or have the old repaired if they are worth it; I mean by repairing; they would have to come out to be repaired.

Q. Why do they plug boiler tubes?

A. On account of their giving out and leaking.

Q. Near the outside connection or the inside?

A. That does not matter; when a tube gives out, if it is anywhere away from the sheet, from a few inches to five or six feet, or half the length of the tube, the only thing to be done would be to stop it

87 up; if it springs a leak from over-heating or undue expansion and

contraction, it may be repaired, or the leak may be stopped by other means.

Q. By what means?

A. By re-expanding the tube.

Q. How is that done?

A. The expanding is done by a tube expander; there are two kinds of expanders; the Dudgeon is the more modern tool, and is preferred by some.

Q. Have the steamers plying on the southern coast often passed under your examination?

A. Yes, sir; during the war I have had a good deal of experience in those matters.

Q. Was it the custom to carry extra tubes?

(Objected to on the ground that the experience of the witness was not late enough.)

WITNESS. I have some experience now.

Q. You have been connected with your establishment all the time?

A. Yes, sir; boats come there to be repaired all the time; some from the southern coast and New Orleans.

Q. Have you repaired steamers running from Philadelphia south?

A. Some of them; we are repairing one at present.

Q. Is it or not their habit to carry extra tubes?

(Objected to on the ground that there is nothing in the libel charging that they did not carry extra tubes.)

The COURT. I think you may prove, in the language of the charter party, that according to the usage of steamers with this description of boiler, going to Galveston, it is customary to be provided with these extra tubes.

Q. Have you any knowledge of steamers going to Galveston?

A. I do not think that I ever repaired any to go to that port specially; I know of them going there.

By the COURT. Do you know anything about the fitment of vessels going to Galveston?

88 A. No, sir; that is optional with the engineer; boiler tubes generally are included in the engineer's stores.

Q. (By Mr. BENEDICT.) Extra boiler tubes. Are extra boiler tubes usually included in the engineer's stores for vessels going to Galveston, Texas, or any port near it?

(Objected to.)

Q. Do you know of the fitment of vessels that go to Galveston?

A. No, sir.

Q. Do you know of the fitment of vessels going to that neighborhood?

(Objected to.)

Q. Have you ever been to Galveston?

A. No, sir.

Q. What do you mean by optional with the engineer?

A. They having the fitting out of the stores of the ship they are going out in charge of, as a general thing, supply themselves with tubes.

Q. Do you know that they do supply themselves with tubes going to Galveston?

A. I would say I never repaired a vessel going to this port specially.

Q. Have you seen vessels repairing to go there?

A. No, sir; I only know of them being repaired.

Q. Only heard of it?

A. That is all.

Q. Have you repaired vessels going to ports near Galveston?

A. I repaired vessels going to New Orleans; I have one under repair at present, going to Venezuela.

Mr. BENEDICT. We offer to show that it is proper for vessels going to ports in the Gulf of Mexico to carry extra boiler tubes.

Q. What knowledge have you of vessels going to southern ports, or going to ports in the Gulf of Mexico, about their fitment?

89 A. About the engineer's stores—I presume my experience and knowledge; I cannot state any particular vessel going to a particular port, only I frequently take orders from engineers for their stores; sometimes boiler-tubes are included, and sometimes they are not, it being optional, altogether, with the engineer in selecting his stores; if he deems it necessary to have boiler-tubes, he takes them.

Q. If he knew his boiler-tubes were weak, would it be proper for him to take them?

(Objected to.)

Q. What experience have you as to whether such tubes are usually taken or not to the ports in the Gulf of Mexico?

A. Generally at those ports where there are poor facilities for repairing boilers they generally take all they can—boiler, iron plates, and rivets, and everything necessary to repair vessels.

Q. Suppose you were called upon to inspect a boiler, and find five or six tubes stopped up, either with plugs or the rods and washers, what ought to be done with the boiler before starting on a voyage of this kind?

(Objected to.)

HENRY HARTLEY.

Direct examination resumed by Mr. BENEDICT:

Q. Suppose you were called upon to inspect a boiler, and you found five or six tubes stopped up either with plugs or with rod and washer, what ought to be done with the boiler before starting on a voyage to the Gulf of Mexico?

(Objected to.)

Mr. BENEDICT. We expect to show that this vessel, before she left Philadelphia, had five or six tubes stopped up.

90 (Mr. Donohue objects, on the ground, first, that the witness is not shown to have any knowledge of a voyage to the Gulf of Mexico; secondly, that no foundation has been laid in order to entitle the libellants to the witness' opinion; and, thirdly, that the opinion would be immaterial.)

The COURT. It seems to me that it is of no consequence what ought to be done; the question is whether a boiler in that condition answers the language of the charter party.

(Question withdrawn.)

Q. I wish you would explain the construction of this boiler.

A. It would be rather difficult to do it without a diagram.

Q. How many tubes were there in this boiler?

A. I cannot say positively the exact number, but think about 150; they are flue tubes.

Q. What size?

A. Three or three and a half inches diameter.

Q. How long are they?

A. I did not measure them.

Q. About how long?

A. I judge about eight or nine feet.
Q. How many boilers in her?
A. One boiler.
Q. Those tubes go from one flat sheet to another?
A. They do, from one tube sheet to the other; holes drilled corresponding with each other.
Q. The ends of the tubes being inserted in each sheet?
A. Yes, in each sheet.

By Mr. BENEDICT:

Q. The water is between the two sheets and around the flues?
A. The flues hold the tubes in place, and the fire goes through the tubes when the boiler is in condition.
Q. What is the effect of plugging up one of these tubes at both ends, or either end?
91 A. It deteriorates the boiler that much in value.
Q. How?
A. In steaming; it cuts off that much heating surface.

By the COURT:

Q. Do you mean that in a boiler of 150 tubes, all of equal size, plugging up one of the tubes so that no fire passes through it, cuts off 1-150 part of the heating surface of that boiler
A. I cannot tell the exact percentage.
Q. Is the percentage equal to the number of tubes?
A. It is equal to the heating surface in that tube.
Q. If the heating surface is alike, then you cut off 1-150 part of the tube-heating surface?
A. Yes, of the tube-heating surface, but all of the heating surface is not in the tubes.

By Mr. BENEDICT:

Q. Are those tubes so situated that you can plug both ends of them with wooden plugs, and yet use the boiler?
A. Yes, sir; that is, if you do not plug the whole of them; if you do, you render the boiler useless.
Q. What I want to know is, if you plug both ends of these, does not the fire touch the wooden plugs?
A. It does.
Q. Does it not burn them up?
A. They are generally covered with washers and rods.
Q. Two of these, as I understand you, were filled with wooden plugs without washers and rods?
A. Yes, sir.
Q. And the others had washers and rods; whether they had plugs in them or not, you do not know?
A. I do not know; I presume they had.
Q. Can you use a wooden plug in both or either of the ends of a tube without covering it with washer and rod, without its being affected by the fire?
(Objected to.)

By the COURT:

Q You saw these tubes had wooden plugs?
92 A. Yes; they were blackened; they were driven in as far as they could be—nearly flush with the ends of the tubes; I suppose it was impossible to get a washer on, they being the corner tubes; they were blackened with fire; I could not tell how long they had been in

there, probably only a day; I know there is water on the inside to keep the plug moist—to keep it from burning there.

Q. When you fasten the tubes with washers and rods, describe how such repairs are made.

A. They are generally plugged up at each end with wooden plugs made of soft pine wood, driven in as hard as can be; there is a hole through the plug in the centre, through which they run an iron rod with a thread and nut on each end; over this they put a washer a little larger than the diameter of the tube, and the nut is put on and screwed up at each end.

Q. The washer is between the nut and the tube sheets?

A. Yes, for holding the plugs in and protecting them there.

Q. Just as far as that is done it makes the boiler useless?

A. Yes, to that extent; this number of tubes are useless.

Q. Whereabouts, in such a tubular boiler as that, are the tubes likely to give out?

A. Generally at the tube sheet, where they go through the sheet.

Q. At the joint?

A. Yes, sir; at each joint of the tube.

Q. What is that giving out caused by?

A. Several causes; sometimes from corrosion, and others by the tube becoming overheated, which causes it to leak, in the contraction of the tube.

Q. That is the contraction of the tube away from the sheet?

A. Yes, sir; sometimes they are imperfectly put in, or injured in the putting in, and will show their weakness there first.

Q. When the boiler is being made, and the tubes are put into the holes in the tube sheets, will you describe how they are fastened?

93 A. After the holes are prepared in the sheet to receive the tubes, the tubes are inserted loosely, run through the sheet, and a proper amount of material left on the end projecting from each sheet on the tube; there is then an expanding tube inserted.

Q. What do you mean by the proper amount of material left?

A. Say about 1-18 of an inch of surplus on the tube—not on the sheet; there is an expanding tube inserted, and the tube set out hard against the sheet, making a contact joint; then it is turned over.

Q. What becomes of the surplus of the tube, if not turned over as a flange?

A. It remains there.

Q. How is the joint made?

A. By contact.

Q. Describe the tube expander?

A. It is a mandrill turned off to the inside diameter of the tube, then it is cut up into segments; in the centre of the mandrill there is a taper hole drilled, for which taper hole there is a taper mandrill made; after the expander is prepared it is inserted into the tube, this taper drift is driven in the centre of the mandrill or expander; then it is set out, causing it to go out with the tube, carrying the tube with it up to the sheet.

Q. Then, if a tube leaks by reason of its being contracted away from the tube sheet, you can repair it again with the expander?

A. You can repair it; yes, you can reset it.

Q. But if the injury is occasioned by anything else but the mere contraction of the tube, you cannot stop the leak by merely expanding the tube?

A. No; if it is corroded or split, or a hole in it, it is impossible to do anything with it by the expanding tube.

Q. Then you must either block it up or put in a new one?

A. If not severely injured, sometimes they are stopped by a ferule being driven inside of the tube, and then the expander is put in
94 and set out to the tube, carrying both the ferule and the tube out to the sheet; but, if the tube if injured to any great extent, that is hardly a safe remedy.

Q. What is the general effect upon a boiler, as compared with good use, of a vessel lying up.

(Objected to; excluded.)

Q. If a steamer sails from port, and within six hours of her sailing, without any stress of weather, and without any strain of steam beyond the ordinary use, the boiler breaks out a large number of her tubes—say 25 of her tubes—on such a boiler as this; on these facts, what would you say was the condition of the boiler when she went to sea?

(Objected to.)

The COURT. Show the condition of the boiler before she left Philadelphia, by a person that examined her; show its condition when she came back; show the number of stoppages, and that the officers and captain had nothing to do with them in the navigation of the vessel, and then you have the foundation for your inference that they were blown out and stopped up.

Cross-examined by Mr. DONOHUE:

Q. Have you ever been to sea?

A. Never, sir.

Q. Your position is in the office of the gentleman you speak of?

A. It is in the shop.

Q. Doing what?

Q. Making boilers.

Q. Making?

A. Constructing boilers.

Q. What is your particular part of it?

A. The superintendence of the construction of boilers.

Q. And repairs?

A. Yes, sir.

Q. You gave us the way that those tubes were plugged; have you ever plugged one yourself?

95 A. I have; I have stood over the men and directed them how to do it.

Q. In the shop?

A. In the dock at the wharf, on board the boats.

Q. Were they going to be used after you so plugged them?

A. Yes, sir.

Q. How often have you done that?

A. Very often.

Q. In repairing the boilers of vessels coming from sea, you find them plugged in that way?

A. Sometimes.

Q. You have found them even on a new boiler; I do not mean a boiler that has not been used, but I mean a boiler that has just been used?

A. I cannot exactly say how long the boiler had been used; I have seen it on boilers several years old.

Q. Have you not seen it on boilers less than a year old?

A. Boilers on one voyage, you mean?
Q. Yes.
A. No; I have no recollection of seeing it; I cannot say positively.
Q. I said a year, and you reduced it to one voyage?
A. I cannot say positively that I ever saw it within a year; I have heard of its being done; it never came under my notice.
Q. It never came to your knowledge that it was done within a year?
A. I cannot say that it has.

By the COURT:

Q. Where there is an injury in putting it in, that might be developed immediately?
A. It might immediately; it might be developed before you got out of the bay with the vessel.

By Mr. DONOHUE:

Q. You were speaking about using salt water—you mean using it without condensers?
96 A. I mean using sea water.
Q. Directly—not condensing it and then using it?
A. Not being properly condensed.
Q. The whole matter you have testified to as to the condition of boilers at particular times depends in a great measure on how they have been used?
A. Yes; it depends somewhat on how they have been used.
Q. I understand you to say that you never have been to sea in any capacity?
A. Never.
Q. By whose request did you go to examine this boat?
A. At the request of S. & J. M. Flanagan.
Q. Do you know what interest they had in her?
(Objected to as immaterial.)
Q. Did any one go with you?
A. No one went with me to examine the boiler; I met some gentlemen on board.
Q. Who were they?
A. Mr. Raney.
Q. Anybody else?
A. I met several gentlemen that I supposed to be captains; they did not assist me to examine the boiler.
Q. They took no part with you in that; was there any one else besides those that were captains?
A. No one except the engineer in charge.
Q. Who was he, do you recollect?
A. I don't know his name; I recognized him in court yesterday.
Q. It was not Sherman?
A. I don't know the gentleman by name; I supposed him to be the chief engineer.

Redirect:

Q. Is a boiler in the condition in which you saw that one in a proper condition for a vessel to go on a voyage to the Gulf of Mexico?
97 (Objected to, on the ground that this witness has not had experience from which he can speak; second, that the answer sought to be obtained would be entirely immaterial. Objection overruled.)
A. No, sir.

Recross:

Q. Can you tell me what boat you ever fitted to go to the Gulf of Mexico, with boiler tubes?

A. In 1871, 9th month, we fitted out the Spanish steamer Union.

Q. To go where?

A. To go to the West Indies.

Q. That was in September, 1871, you fitted out the Spanish steamer Union, to go to the West Indies?

A. Yes, sir.

Q. She had a tubular boiler?

A. She had.

Q. Tell me any other that you fitted for the Gulf of Mexico, with tubular boiler.

A. None for that particular latitude.

JOHN SHAW, called by the libellants, sworn.

Examined by Mr. BENEDICT:

Q. What is your business?

A. Machinist and engineer.

Q. What experience have you had in that capacity?

A. About twenty-five years.

Q. What employment are you in now?

A. In S. & J. M. Flanagan's, and in the employment of the Philadelphia & Southern Steamship Co.'s.

Q. What experience have you had with reference to steamships and boilers?

A. About five years' sea experience as an engineer on steamers.

98 Q. And how with reference to your shore experience?

A. I have had about twenty years' shore experience in ships, and in constructing marine engines, too.

Q. Engines and boilers—do you include boilers?

A. Engines and boilers.

Q. Did you go to look at this boiler of the Francis Wright?

A. I did, sir.

Q. When and where?

A. Lying at Smith's Island, opposite the city of Philadelphia; I cannot exactly tell you what date it was, but after she came from her last voyage.

Q. Who was present at the time you made that examination?

A. No one but the fireman attached to the vessel, I believe.

Q. Describe to the court what you found to be the condition of the boiler.

A. I found about twenty-four of the tubes stopped up with rods and washers, and two with wooden plugs.

Q. Were there any indications of other tubes having leaked?

A. Not that I can say positively.

Q. What were the indications of those tubes having leaked, if any, except their being plugged?

A. There was no other indications of a leak, except being plugged, that I could see.

Q. Was that boiler in a fit and proper condition to go to the Gulf of Mexico?

(Objected to.)

Q. What trade were the vessels that you were on, with tubular boilers, engaged in?

A. The New Orleans trade, Savannah, Charleston, and Wilmington, North Carolina.

Q. Any beyond New Orleans?

A. No, sir.

Q. Any for the West Indies?

99 A. Yes, sir; the two New Orleans vessels I have reference to ran to Havana, Cuba, and also to New Orleans.

Q. Now, was that boiler in the Francis Wright in a fit and proper condition to go upon a voyage to the Gulf of Mexico?

(Objected to; admitted.)

A. No, sir.

Q. Did you see the boiler before she started on her voyage to Galveston?

A. Not immediately before she started.

Q. Had you ever seen it before?

A. On the 10th of May, 1872.

Q. Where?

A. Over in Brooklyn; I do not know the exact place she was lying.

Q. Did you make an examination of her then?

A. I did.

Q. Of the boiler?

A. Yes, sir.

Q. Do you know whether it was the same boiler you saw then that you saw on her in Philadelphia?

A. Yes, sir; it was the same.

Q. What condition was it in when you examined it in May, 1872?

A. I objected principally to the crown-sheets of the flues then.

Q. Did you see Messrs. Woodhouse & Rudd, or either of them, there?

A. Not that I know of; I think I recollect Mr. Rudd's face now; I think I was in his office.

Q. Did they refer you to any one to get information about the boiler?

(Objected to.)

A. No, sir.

Q. Did they give you any information about the age of the boiler?

A. No, sir.

100 Q. Could you form a judgment as to its age by an inspection of it?

A. No, sir; not definitely.

Q. Who did you see, if any one, connected with the vessel at the time you examined her, in 1872?

A. I don't know that I saw any one on board the vessel but a watchman, until I came over to the office with General James, who is general agent of the Philadelphia and Southern Steamship Co.; I think I recognize this gentleman's face as being in the office at that time; Mr. Rudd.

Q. Do you know who was the chief engineer of the vessel at that time?

A. I do not know.

Q. Do you recollect, when you examined her in Philadelphia, examining the back connection as to indications of a leak there?

A. Yes, sir; I examined the back connections.

Q. Do you remember any indications of leaks from the tubes in the back connection?

A. To my mind there was.
Q. What was that indication?
A. Along the side of the furnace, coming from the back connection towards the grate bars, there was a line of two inches from the part that is called the table up to the side of the boiler, which indicated a dampness, and where the ashes there had been wet.
Q. How far did that extend?
A. It extended from the back connection forward of the grate bars all the way to the after end of the grate bars.
Q. About how far?
A. About four feet, probably.
Q. Do you recollect whether the iron had the appearance of being cleaned by a leak?
A. Yes, sir.
Q. State what that appearance was.
A. The iron was perfectly clear, apparently washed off, which is not generally the case in the back connection of boilers if tight.

101 Cross-examined by Mr. DONOHUE:

Q. You have seen such indications on boilers before?
A. Yes, sir.
Q. Was there water in this boiler when you examined it?
A. There was, sir.
Q. You say when you came on here, in 1872, you came with Gen. James, the general agent of the Philadelphia and Southern Steamship Co.?
A. Yes, sir.
Q. That is the company you were employed by in which Mr. Flanagan is?
A. I am employed by both companies—by the Philadelphia and Southern Steamship Co., and by Mr. Flanagan's.
Q. Which is Gen. James connected with?
A. With the Philadelphia and Southern Steamship Co.
Q. And is Mr. Flanagan in that company?
A. He is interested in it.
Q. You say you had five years' experience at sea?
A. Yes, sir.
Q. When?
A. From 1862 until 1867.
Q. As what?
A. As assistant engineer and engineer in chief.
Q. And since that time what have you been doing in the shop?
A. Partly in the shop, and partly engaged by S. & J. M. Flanagan.

By the COURT:

Q. These twenty-four tubes stopped up with washers—do you mean that both ends were stopped up with rods and washers?
A. Yes, sir; the rods run the whole length of the tube, and there is a nut at each end and a washer.
Q. Were they stopped up at both ends?
A. Yes, sir.
Q. And those two that were plugged had wooden plugs at both ends?
A. Yes, sir.

102 By Mr. DONOHUE:

Q. There would be no use in stopping one end of a tube?
A. No, sir; I don't think there would.

JAMES M. DALTON, called by the libellants, sworn:

Examined by Mr. BENEDICT:

Q. What is your business?

A. I am an engineer and machinist by trade; I served my time with Charles Reeder, in Baltimore.

Q. How many years' experience have you had?

A. I have worked off and on for fifteen or twenty years, and I carried on a business for two years myself.

Q. Has your experience made you familiar with marine boilers and engines?

A. Yes, sir; I have made a voyage to the Gulf of Mexico and back to Philadelphia; I have made several voyages between New Orleans and the coast of Texas.

Q. Are you in business for yourself?

A. No, sir; I am cashier and bookkeeper for a machine establishment in Philadelphia, and consulting engineer, and I solicit work for them.

Q. Did you ever see the boiler of the Francis Wright?

A. Yes, sir.

Q. When?

A. When she came to Philadelphia to enter this charter party.

Q. Were you in company with any one when you saw it?

A. Yes, sir; I had several mechanics on board—making steam connections.

Q. At whose request?

A. At the request of the charterers, who paid my bills; I did some work for them.

Q. Who brought you the order?

A. Mr. S. W. Tilton, who fitted up the refrigerators; I worked under his orders, and the captain approved my bill and they paid it.

103 Q. What had you to do with the boiler in this matter?

A. I had nothing to do with the boiler; I wanted to get the repairs of the boiler, but was told I could not have it.

Q. Who told you you could not have it?

A. I was told it was under the owner's orders.

(Mr. Donohue objects to what the witness was told.)

WITNESS. I do not know, only I asked to get the repairs and could not get them.

Q. Did you try to make an examination of that boiler?

A. The engineer told me that he would allow no man——

(Mr. Donohue objects to the witness stating more than in answer to the question.)

WITNESS. I could not examine the boiler; I would not be permitted.

Q. Did you endeavor to?

A. I wanted to examine it.

Q. Were you able to?

(Objected to.)

Mr. Benedict offers to prove that this witness desired to see the boiler, and Mr. Sherman, the engineer, refused to permit him, and said that he would allow no man to examine the boiler.

(Objected to; excluded.)

Q. What were the steam connections you were making?

A. To work the refrigerating machinery exclusively.

Q. What were the connections with?

A. The main steam pipe from the boilers; not to the boiler itself, but to the main steam pipe; they having a main steam pipe, I had no ne-

cessity to make connection with the boiler, and consequently did not ouch it.

Q. Did the working of the refrigerator at all depend upon the condition of the boiler?

A. Decidedly; without steam it could not work; that explains my desire to know the capacity of the boiler.

104 Mr. BENEDICT. Now I desire to prove that the engineer refused to allow him to make an examination of the boiler.

(Objected to.)

Q. Did you request the engineer, Mr. Sherman, to allow you to examine the boiler?

(Objected to on the ground that it is entirely immaterial; excluded.)

Q. Did Mr. Sherman refuse to allow you to examine the boiler?

(Same objection; excluded.)

Q. Were you requested during that period, by Mr. Sherman, to give him an estimate of the cost of putting in a quantity of new tubes?

(Same objection; excluded.)

Q. State whether a boiler, such as this, with say twenty-six tubes plugged up, would be in a fit condition to go upon a voyage to Galveston from Philadelphia, or to return?

(Objected to.)

Q. Did you see the engine or the boiler after she came back?

A. I would not be permitted to examine it.

Q. Do you know what kind of a boiler this was?

A. I know the general character of the boiler from seeing the outside of it.

Q. That was all you did see?

A. And the description of the engineer.

Q. Did you see that it was a tubular boiler?

A. Yes, sir.

Q. Did you form any judgment, at the time, of its length from your own observation?

A. Yes, sir; I judged the tubes to be from nine to ten or twelve feet long.

105 Q. Did you get any idea of how many tubes it had from your own observation?

A. Yes, sir; I would judge at that time, without having any means of counting, from one hundred and twenty-five to one hundred and seventy-five, according to the diameter of the tubes.

Q. Could you form any idea from what you saw what was the diameter of the tubes?

A. Yes, sir; I thought they were about three inches. I was told——

Q. No matter what you were told.

A. I saw them casually by looking at the boiler, and they were about three inches. I am blind of one eye and have to go close.

Q. Were you close enough to form an idea?

A. Yes, sir.

Q. You think they were about three inches?

A. I thought so.

Q. State whether a boiler such as this, with twenty-six tubes plugged up, is in a fit condition to go a voyage from Philadelphia to Galveston, or to return.

(Objected to; admitted.)

A. In my opinion, not.

Cross-examined by Mr. DONOHUE:

Q. You say you went on a voyage to Galveston. In what capacity?

A. I went a voyage to Texas from Philadelphia—to the coast of Texas.

Q. But one voyage to the coast of Texas?

A. Yes, sir; and returned to Philadelphia.

Q. In what capacity?

A. As acting chief engineer of a company with which I was connected.

Q. In the meat business?

A. Yes, sir.

Q. You had charge of the meat apparatus?

A. Yes, sir.

106 Q. What vessel was that?

A. The Firefly; she was a side-wheel vessel.

Q. What kind of a boiler had she?

A. A tubular boiler.

Q. You say you went several voyages beside that; from where to where?

A. From Texas to New Orleans, before coming back to Philadelphia; all within a year and a half. I went out with the Firefly and returned with her, and came home with her.

Q. You were in charge of this apparatus?

A. Yes, sir.

Q. Intermediate the going out and coming home, you made other voyages on her?

A. Yes, sir; to New Orleans three voyages.

Q. Were these all the voyages you made to sea?

A. Yes, sir.

Q. And you were out in the same capacity all the time?

A. Not all the time. At first I was the company's consulting chief engineer; I conducted all their machinery operations; I had charge of all their machinery. The last part of the time I had charge of the refrigerating machinery.

Q. When you say the first and last part, do you mean the first and last of these voyages?

A. I mean going out to Texas and remaining there, and coming home in the Firefly.

Q. When you speak of looking at the boilers, do you mean to be understood that you saw the tubes?

A. The ends of the tubes in the fire-box; yes, sir.

Q. Where were you standing when you saw them?

A. In the engine-room, down in front of the boiler; standing in front of it.

Q. How far off?

A. As much as six or eight feet, probably. There is a partition or bulkhead. I saw in the smoking-box of the boiler the ends of the tubes.

Q. Whatever covers the ends of the tubes was off?

A. Yes, sir.

107 Q. When was that?

A. That was when she first came to Philadelphia; I was on board nights, working.

Q. I understand you to say that you took steam for the refrigerating from the main steam-pipe?

A. Yes, sir.

Q. The main steam-pipe leading to the machinery?

A. Yes, sir.

HORATIO G. ZANE, called by the libellants, sworn:

Examined by Mr. BENEDICT:

Q. What is your business?

A. For the last three years engaged in operating with Broy's patent refrigerator the most of the time.

Q. What experience have you had in this business of bringing meat from Texas north?

A. I was employed by Henry Denison & Co. to bring a cargo from there about a year ago last August—from Rockport, Texas, to Philadelphia.

Q. Have you had any experience in similar business elsewhere?

A. Yes, sir; in Philadelphia last summer, in the employment of Messrs. Wilson & Holmes.

Q. And you also went on this voyage on the Francis Wright?

A. I returned in the vessel from Galveston to Philadelphia.

Q. You joined her at Galveston?

A. Yes, sir.

Q. When did you join her there? How soon after she got there?

A. The day of her arrival.

Q. Did you make any examination of her boiler there?

A. Yes, sir; I was in the boiler-room.

Q. What did you see about the boiler?

A. The first time I went into the fire-room I saw about half a dozen tubes plugged, or at least stopped with rod and clamps, or washers. I was again in her fire-room after her return to Galveston.

108 Q. What did you see there?

A. I saw the second-assistant engineer and one of the oilers engaged in putting in rods, stopping the tubes.

Q. How many?

A. About 20, I should think; that is, about 20 were stopped at that time.

Q. You mean 20 besides the half dozen?

A. No, sir; all told.

Q. Did you see any other work done on the tubes except stopping them up?

A. No, sir.

Q. Between the time she left Galveston and her return, do you recollect seeing any leak from the boiler?

A. Not directly from the boiler. I saw a trickling down in front of the door and falling on the floor below.

Q. To what extent?

A. It was trickling down sufficient to put out one fire.

Q. The water was heated, I suppose?

A. It had the appearance of it.

Q. Where did the hot water go to?

A. I cannot be sure; it must have gone below. It could not have gone up, of course.

Q. Was it running down when you saw it?

A. No, sir; it was trickling down from the front of the fire-door to the floor of the fire-room.

Q. You saw it running on to the floor of the fire-room?

A. Yes, sir.

Q. And from there it would run further below, and be pumped out?

A. It would run further below, I suppose, to the bilge of the ship.

(Mr. Donohue objects to what he supposes.)

Q. Were the bilge pumps at work?
A. Yes, sir; I saw them at work. I cannot say how many times.
A. At this time?
A. No, sir; I do not remember it.
109 Q. What would be the effect upon the refrigerating apparatus of allowing this hot water from the boiler to run into the bilge of the ship?
(Objected to.)

By Mr. DONOHUE:

Q. Did you ever see the effect on another refrigerating apparatus of hot water running into the bilge of a ship from the boiler?
A. No, sir.

By Mr. BENEDICT:

Q. State how the refrigerating apparatus was situated with reference to the bilge of the ship.
A. In the forward hold of the vessel, standing down on the floor, the bilge being between the floor of the refrigerating room and the bottom of the vessel.
Q. What would be the effect of hot water getting into the bilge upon the refrigerating apparatus?
(Objected to.)
The COURT. I think you must show that he has had some experience in that regard.
Q. Have you had any experience as to the effect of heat on a refrigerating apparatus?
(Objected to as speculative.)
Q. When was it that you saw the water trickling down?
A. Just before we returned to Galveston; some time during her stoppage at sea.
Q. Did you go down below at all, where you could tell anything about the water in the bilge?
A. No, sir.
Q. Or the heat of it?
A. Yes, sir.
Q. Where were you when you could tell about the heat of it?
110 A. On the bottom of the refrigerating room.
Q. Do you mean the inside of the bottom, or the outside of the bottom?
A. I mean the bottom of the room—inside the room.
Q. Did you go inside of the room?
A. Yes, sir.
Q. What could you tell about it there?
A. At times I found the floor very warm.
Q. You are speaking of the time of this stoppage?
A. That was one particular time.
Q. What effect would that tend to have upon the refrigerator?
(Objected to.)
Q. Was the ice on the floor?
A. No, sir.
Q. Describe the inside of the refrigerating.
A. The ice used in the refrigerating by this process is placed in a box; the air is driven through this box, which is filled with ice, and from the ice box into the refrigerated room.
Q. Where does the ice box stand?

A. In the refrigerated room.
Q. And where with reference to the floor?
A. Stands on the floor.
Q. How big is the ice-box?
A. About four feet square, and eight or nine feet high.
Q. What is the size of the refrigerated room?
A. About thirty feet wide, and, probably, sixty feet long. I cannot tell exactly; I never measured it.
Q. This box you replenished with ice from time to time?
A. Yes, sir.
Q. What is the effect upon the refrigerated room of heating the floor?
(Objected to.)
Q. Did you notice whether this heat of the floor affected the atmosphere of the refrigerated room?
111 (Objected to as immaterial.)

By the COURT:

Q. Was the beef in this refrigerated room?
A. Yes, sir.
Q. Describe how the beef was placed.
A. On the bottom there was a tier of slatting, and the beef was laid on the slats; then alternately on slats again.
Q. You did not put one piece of beef on the top of another?
A. No, sir; the slats divided the different layers.
Q. What separated the second tier of slats?
A. Extensions and cleets on the sides and centres.
Q. So that there was a circulation of air around the beef?
A. Yes, sir.

The COURT. I will admit the testimony, in order to show that there was something beyond the visitation of Providence to spoil the beef; not for the purpose of showing that it came from the hot water, but that the heat of the floor had something to do with the atmosphere of the room.

Q. Did you notice whether the heat of the floor affected the atmosphere of the refrigerated room?
(Objected to—admitted.)
A. Yes, sir.
Q. How did you notice that?
(Objected to—admitted.)
A. By the use of the thermometer.
Q. To what extent was the temperature affected as indicated by the thermometer?
(Objected to.)
Q. When you started from Galveston, do you recollect what the temperature of the refrigerated room was?
(Objected to—admitted.)
112 A. 39° Fahrenheit.
Q. That is, when you first started?
A. Yes, sir.
Q. Did you notice any variation in the temperature after that?
(Objected to—admitted.)
A. Yes, sir.
Q. When and what?
A. At different times during our passage from Galveston to Philadelphia.
Q. I speak now of the first time you left Galveston?

A. After we left Galveston the first time, while we were stopped at sea.

Q. What variation did you notice?

(Objected to—admitted.)

A. From 39° up to 44°.

Q. Do you mean that when you stopped at sea that night you went down and at one time found the temperature 39° and at another 44°?

A. No, sir; I mean that when we left Galveston it was 39°, and when we returned to Galveston it was 44°.

Q. Were you down in the refrigerated room during the stoppage?

A. Yes, sir; I think I was. We might have been in motion, but I doubt it.

Q. But it was after you left Galveston, and before you got back?

A. Yes, sir.

Q. And it was after the stoppage had commenced?

A. Yes, sir.

Q. What was the temperature then?

A. I think 46°.

Q. Are you able to state whether there was any variation in the temperature between the top and the bottom of the refrigerated room?

A. Yes, sir.

Q. What was the variation at that time?

113 A. About 3° hotter on the floor.

Q. Did that rise of the temperature have any effect upon the consumption of ice?

A. Yes, sir.

Q. In what way?

A. In melting it faster by the air being warm.

By the COURT:

Q. The refrigerated room did not communicate with the outer atmosphere?

A. No, sir; the air of the refrigerated room did not communicate with the outer air, but was driven by the machinery through the ice-box in contact with the ice.

By Mr. BENEDICT:

Q. Was there any other occasion when you saw the boiler leaking?

A. Yes, sir.

Q. On more than one occasion?

A. I do not remember but once afterwards.

Q. When was that?

A. About the 5th or 6th of November, the day before we arrived at Key West.

Q. What did you see then?

A. The water trickling down as before.

Q. At that time did you discover any difference in the temperature of the refrigerated room?

(Same objection; admitted.)

A. Yes, sir.

Q. What difference did you notice then?

A. About 10°.

Q. Which way?

A. Hotter; it was about 50° at that time.

Q. Was there then any difference between the temperature of the lower part of the room and the upper?

A. I did not examine that part of it at that time.

Q. Do you recollect noticing whether the floor was hot?
114 A. No, sir; at that time I did not go on the floor.
Q. What did you do.
A. I just went below the ceiling; I did not go below the floor; the thermometers were hanging in the room, and I went down beneath the hatch and looked at one.
Q. Do you know anything as to the length of time the water ran on that occasion?
A. No, sir.
Q. What was the condition of this beef when you arrived at Key West?
A. It was in good order.
Q. Up to what time did it continue in good order?
A. I am sure it was good the Tuesday morning after leaving Key West.
Q. And how did you know it was good then?
A. I ate of it, and saw others eat of it.
Q. Did you make any examinations of it yourself?
A. Yes, sir.
Q. How soon after that did you detect any indications of its spoiling?
A. The next day.
Q. How much ice did you get at Key West?
A. Twenty tons.
Q. How much did you have when you left Galveston the first time?
A. I cannot say.
Q. Do you know how much you had when you left the second time?
A. No, sir; I could not weigh it there.
Q. Can you say about how much?
A. Yes, sir; by guess work; I have handled a great deal of ice.
Q. In your judgment, about how much ice was there?
A. The first time we left Galveston, about one hundred tons.
Q. And the second time?
A. Very nearly that—say ninety-five tons.
Q. And when you got to Key West how much had you left?
115 A. About fifteen tons.
Q. And when the beef was thrown overboard, was the ice all used up?
A. Not quite.
Q. What had been the temperature of the refrigerated room from the time you left Key West until the beef was thrown overboard?
A. The first day out about as usual—say 40°; the next day about 60°; it increased each day up to 68°.
Q. When did it get to be 68°?
A. When we were about Cape Hatteras.
Q. When with reference to the beef spoiling?
A. When I saw it 68° was about the time I gave it up as gone.
Q. What was the cause of the gradual rise of temperature, if you know?
(Objected to.)
A. The atmosphere in the refrigerated room was heated from some unnatural cause.
Q. You have used similar apparatus before?
A. Yes, sir.
Q. Was there anything in the condition of this apparatus to which the rise of temperature could be attributed?
(Objected to.)

Q. Was there any difficulty in the working of this apparatus on this vessel?

A. Not that I am aware of.

Cross-examined by Mr. DONOHUE:

Q. Who employed you?

A. Messrs. Duncan & Poey.

Q. During the time who was master of this vessel?

A. Captain Henry Denison.

Q. There was no other commander but him at any time you were on board of her?

A. No, sir.

116 Q. Were you under his orders?

A. Yes, sir.

Q. You spoke of twice you saw water trickling from the boiler?

A. Yes, sir; from the front of the fire-room door—about there.

Q. Did you, on any occasion, ever call any one's attention to it?

A. I don't think I did—not specially.

Q. Did you generally—you have no recollection of calling any one's attention to it?

A. No, sir; we might have talked about it among ourselves.

Q. You have no recollection?

A. No, sir.

Q. Were you in charge of the refrigerating machinery?

A. Yes, sir.

Q. How long were you in the fire-room the first time you saw it trickling down?

A. Twenty minutes, I suppose.

Q. Stayed there twenty minutes?

A. About that.

Q. And this trickling dropped on the floor?

A. Yes, sir.

Q. Where did it come from to the fire-room?

A. From the deck above, and through the engine-room?

Q. Where had you been before going into the fire-room?

A. I cannot say.

Q. What time of day was it?

A. I cannot say.

Q. When you left the boiler-room, where did you go, if you recollect?

A. I have no recollection; I went on deck, I suppose.

Q. Of course, if you have no recollection of the time of day it was when you went, you have no recollection of the time of day it was when you came out?

A. No, sir.

Q. Have you any recollection of the time of day you saw it the second time?

117 A. In the forenoon, I think.

Q. But of that you are not positive?

A. Not positive.

Q. Do you know what day it was?

A. No, sir.

Q. Did you make any memorandum of either time?

A. No, sir.

Q. How long were you there the second time?

A. The second time I was not in the fire room.

Q. You only saw it once?

A. I saw it twice.
Q. Where were you the second time?
A. On the deck.
Q. How long did you see it trickle down?
A. Not over two minutes.
Q. The time of day you do not recollect?
A. No, sir.
Q. Do you recollect where you took the steam for your blower from?
A. No, sir.
Q. You did not notice that?
A. No, sir.
Q. Where was the engine that worked your blower?
A. On the main deck—that is, between the two decks.
Q. And worked this fan or blower how?
A. By a belt—a construction of belts that revolved the blower.
Q. A shaft went down through the blower?
A. I do not understand your question.
Q. Was there an opening in the deck to let the belt go through?
A. No, sir.
Q. What connected the blower in the hold with the machinery that worked it on deck?
A. The blower was not in the hold.
Q. The blower was between decks?
A. Yes, sir.
Q. Do you mean to say that the air that the blower drove into the ice-box was got from the refrigerated room?
118 A. Yes, sir.
Q. How?
A. By suction; a hole was cut in the deck, and the air was sucked from below and driven in again.
Q. There was a suction apparatus from there, and another to drive the air into the ice-box?
A. Yes, sir; the blower is so constructed.
Q. There was no machinery at all in the room?
A. No, sir.
Q. There was no entrance into the room except from above?
A. No, sir; only for the passage of a person through the hatch.
Q. The way you got into it was from above—not a door at the side?
A. Yes, sir.
Q. Where was the ice kept that was not in the ice-box?
A. Between decks, above.
Q. Above where the refrigerator was?
A. Yes, sir.
Q. The ice was stowed between decks there?
A. Yes, sir.
Q. Do you recollect giving, or undertaking to give, some of this beef to one of the government vessels at Key West?
A. Yes, sir.
Q. Did you give any?
A. Yes, sir.
Q. It was not bad?
A. No, sir.
Q. You are sure of that?
A. So far as my knowledge of good and bad beef is concerned, it was good; I have handled many thousand pounds.
Q. You did give it to them and they took it?

A. Yes, sir.
Q. Did you not state, when in Galveston, that you never could get home with that beef?
A. No, sir.
Q. You did not say so in Mr. Hoffman's presence?
119 A. No, sir.
Q. Or Mr. Goetchez?
A. No, sir.
Q. You are positive of that?
A. I am positive.
Q. Did you write any letter from Galveston to the owners of this beef, or any one in connection with it?
A. Yes, sir.
Q. Whom did you write to?
A. To Edward Wilson, of Philadelphia.
Q. Did you not say, in Galveston, that you had written to the owners that you could not get the beef home?
A. No, sir.
Q. You are sure of that?
A. I am sure of it.

Redirect:

Q. Did you write more than one letter to Mr. Wilson from Galveston?
A. Yes, I think I wrote two.
Q. Do you recollect when they were written?
A. I think, one, nearly the last of October.
Q. And the other one?
A. I do not remember, but a very short time afterward.
Q. Before the first sailing?
A. One before the first sailing, and, I think, one afterward.
Q. Have you been on any other voyage to Galveston than this?
A. Yes, sir.
Q. And from Galveston back to Philadelphia?
A. I never went from Philadelphia to Galveston, but I returned from Galveston to Philadelphia, before this.
Q. In the Firefly?
A. Yes, sir.
Q. How many days was she coming back?
(Objected to.)
120 Q. Was she fitted up with a similar apparatus to this?
(Objected to.)

Mr. BENEDICT. I propose to show she was fitted up with a similar apparatus, and how long the apparatus on that occasion did preserve the beef.

The COURT. It may be competent in rebuttal, but not now.
(Excluded.)

HENRY C. REEDER, called by libellants, sworn.

Examined by Mr. BENEDICT:

Q. Where do you live?
A. Germantown, Philadelphia.
Q. In what business?
A. I am in no business now.
Q. What has been your business?
A. Civil engineering.

Q. Did you go on this voyage of the Francis Wright?
A. Yes, sir.
Q. In what capacity, if any?
A. As a passenger.
Q. Did you notice on the voyage out any indications of a leak in the boiler?
A. No, sir.
Q. Did you notice any leak after the vessel sailed from Galveston the first time?
A. Yes, sir.
Q. State what you noticed?
A. The afternoon of the day we left Galveston, when we stopped I noticed water running down over the fire door.
Q. To what extent?
A. I cannot tell; it was not condensed; it ran down to the table, and from that down to the floor of the fire room.
Q. From there where did it go?
A. I do not know.
Q. How much on the floor of the fire room?
121 A. A considerable quantity; I cannot tell exactly; the floor was wet.
Q. How long did you notice that?
A. I cannot say how long; that was about the time they had to stop to repair that I am speaking of now.
Q. Did the water seem to be hot water?
A. Yes, sir; I should judge it was hot water from the steam arising from it.
Q. How long was the stoppage that time?
A. We stopped some time in the middle of the afternoon, and started back for Galveston some time in the forenoon of the next day.
Q. Do you know what was being done on board the steamer to the boiler during that time?
A. I saw men at work; I was in the fire room myself—that was during the stoppage at sea.
Q. What did you see them at work at?
A. I cannot say; I saw them with hammers and other tools doing some work about the boiler; I can't tell what it was.
Q. At work on the boiler or engine?
A. They worked on the boiler, down in the fire room.
Q. After you returned to Galveston, do you know whether anything was done to the boiler?
A. Yes, sir.
Q. How do you know?
A. I saw them putting the caps on the ends of the tubes.
Q. How many?
A. I cannot say; not many; I did not stay long enough to see how many they did.
Q. Who did you see putting caps on?
A. I saw Mr. Sherman screwing one on.
Q. Do you know of anything bought to repair the engine?
A. I know Mr. Sherman and I went down to the machine shop, and we ordered some rods.
(Mr. Donohue objects to what Mr. Sherman ordered; objection overruled.)
122 WITNESS. I was with Mr. Sherman when he ordered the rods.
Q. How many?

A. I think 12 rods and 12 caps; it strikes me that was the quantity.
Q. Did you bring the rods on board?
A. Yes, sir; he and I together; or at least we rode on the dray that did bring them.
Q. Where were they taken when you got them on the ship?
A. I don't know where they were taken to.
Q. Did you see any of them used afterwards in repairing the boiler?
A. I saw rods; I suppose they were some of them.
Q. Was it after or before these rods were brought to the ship that you saw rods used?
A. I saw them previous to the order, and after the order also.
Q. Do you know anything of the purchase of a tube expander?
A. Yes, sir.
Q. By whom was that ordered?
A. Mr. Sherman ordered that; I was with him.
Q. Do you recollect when that was ordered?
A. I think it was ordered the next day after we returned to Galveston; no, it was the second day afterwards, for the next day he and I went on board one or two steam vessels for the purpose of borrowing a tube expander, and he did not succeed, and then he ordered this one; if my recollection serves me right, that is the way of it.
Q. Of whom was it ordered?
A. I think the man's name is Lee; he had a machine shop.
Q. Do you know of their sending to New Orleans to get one?
A. Not of my own knowledge; no, sir.
Q. Did you see a tube expander afterwards on board?
A. I saw one of the portions of it; it got broken some way,
123 and Mr. Sherman and I went down to the machine shop; I recollect now it was the Presidential election-day, and there was no one at work in the shop, and I helped Mr. Sherman to make one of the wheels.
Q. How did it get broken?
A. I do not know.
Q. Did you ever see the expander used?
A. No, sir.
Q. Did you, after she sailed from Galveston the second time, see any leaks in the boiler?
A. I saw the water dropping down again just before we got into Key West.
Q. To what extent did you see it that time?
A. Well, I cannot judge that.
Q. How long a time?
A. It was dripping down some time before we got into Key West.
Q. Were you in the fire-room?
A. Yes, sir.
Q. Did you see it from the deck?
A. I could see it from the deck and from the fire-room.
Q. Did you?
A. No; I saw it this time standing right in front of the fire-room.
Q. How did you come to see it?
A. I cannot say; I was in the habit of making frequent visits down there.
Q. Do you recollect any other occasion when you saw leaks?
A. I think I saw a leak after we left Key West.
Q. Can you give us the date?
A. No, sir; I never kept any memorandum.

Cross-examined by Mr. DONOHUE:

Q. Had you ever been to sea before?
A. No, sir.
Q. You say you were a passenger on this vessel?
A. Yes, sir.
Q. In no capacity at all on board?
A. No, sir.
124 Q. By whose permission did you go?
A. By the permission of Mr. Duncan.
Q. Who was in charge of her while you were on board?
A. Capt. Denison.
Q. All the time?
A. Yes, sir.
Q. Who was mate of her?
A. Mr. Huggins.
Q. Look at this letter, and say if it is yours.
A. It is mine.
Q. You say you had nothing to do with the steamer except as a passenger?
A. On her voyage; after her return to Philadelphia I had charge of the vessel as ship-keeper.
Q. Do you know in whose handwriting this letter is I now show you?
A. I do not know, sir.
Q. Was not the mate of that vessel, while attached to her on this voyage, drunk?
(Objected to as immaterial and as too general; that the question should be confined to some time while the vessel was being navigated; objection sustained.)
Q. You say you were in her fire room twenty minutes?
A. No, sir; I did not say that.
Q. How long were you in the fire-room before you saw the leak, the first time?
A. I cannot say how long I was there at any time.
Q. Have no idea?
A. I have no idea.
Q. Can you give either date?
A. I cannot give the date; I can give about the time.
Q. Can you give the hour of the day either time?
A. No, sir.
Q. And you say the water was dripping from where?
A. Running out of the tubes, I suppose.
Q. I did not ask you to suppose; where did you see the water come from, or drop from?
125 A. I saw it on the face of the boiler that I was looking at.
Q. What part of the face; above the furnace door?
A. Yes, sir.
Q. That you are sure of?
A. I am positive of that.
Q. You cannot be mistaken about that?
A. No, sir.
Q. Both times?
A. Yes, sir.

SAMUEL W. TILTON, a witness called on behalf of the libellants, being duly sworn, testifies:

By Mr. BENEDICT:

Q. What is your business?
A. I am a ship builder.
Q. Where do you live?
A. Philadelphia.
Q. How long have you had experience in ship building?
A. About thirty years.
Q. Are you the gentleman who put up the refrigerating apparatus on board the Francis Wright?
A. Yes, sir.
Q. Did you examine this vessel as to the situation of her bilge, or the condition of her bilge?
A. Yes, sir.
Q. Before she went?
A. Yes, sir.
Q. In the condition of the bilge, where would the water that leaked from the boiler have found its way?
A. Unless it overcome the force of gravity, it would naturally go down into the bilge.
Q. If it go into the bilge, how would that affect the floor of the refrigerating room?
(Objected to; objection sustained.)
Q. Was there anything in the construction of that vessel that would prevent the water that got into the bilge from running forward and aft clear through the vessel?
126 A. No, sir; the inspectors would not pass her if there was.
Q. When the vessel rolled from side to side, was there anything in the construction of the vessel that would prevent the water in the vessel from dashing against the sides of the vessel?
(Objected to.)
A. That is what is termed by the underwriters the blowing of the water.
Q. Describe the condition of the bilge in that particular.
A. I do not know as I can; it is very simple, but to a gentleman not acquainted with the construction at all it is hard to make it understood; the construction of the vessel is such that the water can go from the bilge to the deck.
Q. How is it constructed so that it can go from the bilge to the deck?
A. The timbers are placed eight inches apart from the keel to the deck—a space of eight inches apart from there to the deck—I presume at the bottom, too, at all events—hence the water can go through.
Q That is the space between the timbers alongside of the ship?
A. Yes, sir.
Q. That space communicates with the bilge?
A. Yes; it is a part of the bilge.
Q. How high above the floor-timbers was the floor of this refrigerator?
A. I think some four inches—somewhere thereabouts.

By the COURT:

Q. Do you mean the upper surface of it?
A. Yes, sir; from the top of the timber; I think the timber was some twelve inches thick, which would make some sixteen inches or thereabouts.

Q. The upper surface of the floor of the refrigerator was four inches above?

127 A. From the top of the timbers or thereabouts; I think it was about four inches—three to four, at all events.

Q. From the top of the cross-timbers?

A. Yes, sir; call them cross-timbers if you please; they are called timbers or ribs of the ship; it is the mere frame-work running cross-wise.

By Mr. BENEDICT:

Q. The floor rested on the top of the floor-timbers?

A. Yes, sir.

Q. Which was three or four inches thick?

A. I think it was; I do not know particularly, but it was the common thickness.

By the COURT:

Q. These floor-timbers form the bottom of the lower hold?

A. Yes, sir; they form the bottom of the ship, with the exception of the planking on the outside, which is three or four inches also; the ribs go crosswise of the ship, which I presume is about twelve inches in depth, which is about the usual depth.

Q. Is there not some plank on these floor-timbers?

A. On the bottom.

Mr. DONOHUE. The ceiling?

The WITNESS. The ceiling or the bottom of the refrigerator lying on the top of these timbers—you may call it ceiling if you please.

By Mr. DONOHUE:

Q. Was there any ceiling there before you put down the bottom of the refrigerator?

A. No, sir; we found that there; we had nothing to do with that at all.

By Mr. BENEDICT:

Q. What did you find; did you find the timbers exposed?

A. No, sir; we found the bottom of the refrigerator just as it is to-day.

128 By Mr. DONOHUE:

Q. There was no new bottom?

A. No bottom on at all; it is a ceiling or bottom, just as you choose to call it, and a very nice one.

By the COURT:

Q. You took what you call the floor for the bottom of your refrigerator?

A. Yes, sir.

By Mr. BENEDICT:

Q. How did you prepare it?

A. We didn't prepare it; it was perfect in itself, with the exception of a little caulking; we caulked it up slightly where we thought it needed it.

By the COURT:

Q. How thick is this ceiling?

A. It is three or four inches, I am not certain which.

By Mr. BENEDICT:

Q. Three or four inch plank?

A. Yes, sir; three or four inches think.

Q. As I understood you, all under that floor there is free communication?

A. Yes, sir; there is what we call limber holes.

Q. Made for what purpose?

A. To convey the water from one end of the ship to the other.

Q. To get to the pumps?

A. Yes, sir; to get to the pumps—to "lay" the water to the pumps.

Cross examination by Mr. DONOHUE:

Q. You came here to see this ship?

A. Yes, sir.

Q. And you examined her for whom?

A. For Captain Denison and those gentlemen, the charterers

129 Q. You repaired her—you put some repairs on her in addition to the refrigerator, did you not?

A. We caulked her decks.

Q. By whose direction?

A. By Captain Denison's—by his direction, or the charterers' rather—I was telegraphed to come here by Captain Denison.

Q. These limber-holes, I understood you to say, were left there for the purpose of allowing the water to run to the pumps, so that it could be pumped out?

A. Yes, sir; made there, rather.

Q. For the purpose of allowing the water in the ship to run to the pumps to be pumped out?

A. Yes, sir.

Q. You came on here and examined the ship for Captain Denison?

A. I examined her cargo capacity.

Q. And her condition?

A. Not her condition at all; nothing but her cargo capacity.

Q. Did you see her condition?

A. I did not see her condition at all.

Q. You did not see it?

A. I did not examine it—I did not notice.

Q. Did you see it in Philadelphia?

A. I examined her decks in Philadelphia and caulked them.

Q. You didn't examine anything else?

A. As to her condition I did not.

Q. Did you not wedge her out?

A. That is a part of the caulking; we wedged her ceiling thoroughly from end to end.

Q. Was there anything that you know about on the vessel that she wanted that she did not have?

A. Not so far as the hull was concerned.

Q. Was there anything you knew?

A. I knew nothing about her machinery at all.

Q. You knew nothing about the machinery, and therefore you cannot say anything about the machinery?

130 A. No, sir; I cannot.

Q. Are you a ship-owner yourself?

A. Yes, sir.

Q. Do you own anything in steamboats?

A. I do not, except a small interest in the Firefly; I have a claim on her—I have stock in her; that is all.

Q. Where did the water from the waste go to; how did it get out?

A. That had to go to the pumps and be pumped out.
Q. Did you carry it to the pumps?
A. I did not examine these little limber-holes that you speak about.
Q. Did you carry that water to the pumps; did you have pails?
A. Did I carry it? I did not go on board the ship.
Q. Tell us how it got there.
A. As it melted by the force of the air through it, then it runs down through the holes I made through the three-inch ceiling; I made them with my own hands; I made the holes that it might run out of the ice-box into what you call the bilge, and then it is carried to the pumps through the limber-holes.
Q. Through the holes cut to let it go into these spaces between the bilgers?
A. What you call the bilgers.
Q. I don't call them so—my friend does.
A. No matter what you call them.
Q. As to the ice that was between decks, which melted—how did that get away?
A. It went into the scuppers, which naturally carried the water overboard.
Q. That went into the scuppers?
A. It went into the scuppers, which led the water overboard.
Q. No matter where it carried it.
A. It went into the scuppers, which carried the water overboard.
Q. Was the ice boxed up at all?
A. It was boxed entirely.
131 Q. There were holes left in the boxes?
A. There were scuppers in the boxes, that led into the scuppers which belonged in the ship, and which leads the water overboard.
Q. Whatever scuppers were there were holes?
A. They are all called scuppers, and they are holes.

Redirect examination:

Q. How big are the holes in the bottom of these refrigerating rooms?
A. Six inches by two or three—a half dozen of them—enough to let off water enough to sink the ship in a few hours.

By the COURT:

Q. Holes in the bottom of the refrigerator?
A. The refrigerating box—the ice box.
Q. Two inches by six?
A. Yes, sir; they were two by six, besides a dozen small inch-and-a-quarter or inch-and-a-half auger holes.
Q. These holes were in the bottom of the refrigerating chamber?
A. The ice box to let the water from the ice go into the bilge of the ship.
Q. Do you mean two inches by six in the surface?
A. Two inches wide and six inches long.
Q. You mean on the surface two inches one way and six inches the other?
A. Yes, sir.

By Mr. BENEDICT:

Q. You speak of holes to let out the water from the refrigerating chamber from the ice that melted in the refrigerating room?
A. We had holes through the bottom of the refrigerating room also in case of the blowing of water, so that it might run through.

Q. How many of them?

132 A. One or two small ones.

Q. How big were they—were they auger holes?

A. About one-inch-and-a-quarter auger holes.

Q. That led into the bilge?

A. Yes, sir; they were put in there for a purpose—for a very essential purpose.

By Mr. BENEDICT:

Q. How many?

A. I think there were two or three put in.

Q. What are the holes for?

(Objected to.)

A. It is very simple what it is for, but still we have to have them there.

(Objection sustained.)

Q. Were they necessary for the proper working of the apparatus?

(Objected to.)

A. We have to use them in all sea-going vessels.

(Objection sustained.)

HENRY DENISON recalled by the libellants:

Examined by Mr. BENEDICT:

Q. What was the weather at the time you first started from Galveston?

A. The weather was what I should term a fine, fresh wind from the eastward, and fine weather.

Q. Was there anything in the condition of the weather which made it necessary to turn back to Galveston?

A. No, sir; not in the weather—I think not.

(Mr. Donohue objects to the question and answer.)

The COURT. If you had objected I would not have allowed it in that form.

133 Mr. Donohue moves to strike out the question and answer.

The COURT. I will strike it out, and I may say here that I think I made a mistake in admitting the former question in the shape in which it was put; that is, whether there was anything in the condition of the vessel, outside of the boiler and engine, which made it necessary to return. It is competent for the witness to say that, so far as the weather was concerned, and so far as the condition of the vessel was concerned, outside of the boilers and engine, it was entirely safe for him to have proceeded.

Mr. Donohue moves to strike out the question and answer from the fortieth page of the judge's notes: "Was there anything in the condition of the vessel, outside of the boiler and engine, which made it necessary for you to return?"

The court strikes it out.

By Mr. BENEDICT:

Q. Aside from the condition of the boilers and engine at that time, judging from the condition of the ship herself, was the condition of the weather such as would have made it prudent to proceed on the voyage?

(Objected to; admitted.)

A. In my judgment, it was proper to proceed; I should have proceeded directly with the vessel.

Q. So far as the condition of the ship was concerned, aside from the condition of the boiler and the engine, would it have been proper to have proceeded on your voyage?

(Objected to; admitted.)

A. Yes, sir.

Mr. Benedict moved to give evidence of the declarations of the chief engineer, Sherman, on the ground that he was the agent of the owners.

134 The court held that, under the evidence, Sherman was not the agent of the owners.

By Mr. DONOHUE:

Q. Look at this paper, and state whose signature it is.

A. That is Duncan & Poey's; I brought that from Duncan & Poey; it is the order under which I got the ship.

(Letter dated September 17, 1872, from Duncan & Poey to Woodhouse & Rudd, marked G 2, offered in evidence and admitted.)

(Witness shown letter dated October 15, 1872, from Duncan & Poey to Mr. Woodhouse.)

Q. Do you know that handwriting?

A. I should judge that to be Duncan & Poey's.

(Marked for identification H, offered in evidence; objected to as immaterial; admitted.)

Q. Look at this letter (letter dated September 26, from Duncan & Poey to Woodhouse and Rudd).

A. That is the signature of Duncan & Poey, I believe.

(Marked Exhibit I, for identification, offered in evidence; objected to as immaterial, and admitted subject to objection.)

By Mr. BENEDICT:

Q. Look at the three letters now shown you, and state whether you received them from Woodhouse and Rudd.

A. I did.

(Marked Exhibits J, K, and L, and put in evidence subject to objection.)

Mr. BENEDICT. If your honor please, I now rest. It is fair for me to say, however, that if the testimony stands as I have it on the stenographer's minutes, I have got in all that I need; but we have had a good deal of discussion as to what the testimony is, and I may have occasion to put in further evidence.

135 Respondents called E. PLATT STRATTON, who, being duly sworn, testified as follows:

Examined by Mr. DONOHUE:

Q. What is your age?

A. I am twenty-eight years old.

Q. What is your present employment?

A. Assistant United States local inspector of boilers at New York.

Q. You have been so employed how long?

A. Two years the 15th of last November.

Q. During that time your business has been what?

A. Inspecting boilers.

Q. When you speak of inspecting boilers, do you include testing them?

A. Yes, sir.

Q. Before being in that office connected with the inspection, what was your business?

A. I have been employed as an engineer ever since I was sixteen years old, learning my trade, etc.

Q. Where?

A. I served my apprenticeship in the Morgan Iron Works, New York.

Q. A small or extensive establishment?

A. The most extensive in the city at present.

Q. Part of their business building boilers?

A. Yes, sir.

Q. And reparing them?

A. Yes, sir.

Q. Are you, or not, familiar with tubular boilers?

A. I am entirely so.

Q. Did you make any examination of the boiler of the Francis Wright before she sailed from Philadelphia?

A. I did, sir, and inspected it.

Q. Do you know of any of the tubes being stopped up?

A. I think there were, if I recollect right, but not enough to be of any moment.

Q. Do you know how many?

136 A. I do not know the exact number, but not enough to be of any moment or of any consequence.

Q. How many is that?

A. Probably there may have been half a dozen, and it would not have amounted to anything.

Q. At that time did you know how many?

A. Yes, sir; I went down under the boiler and round it and through it, in every part of it.

Q. Was it tested?

A. Yes, sir; it was tested by hydrostatic pressure.

Q. Was that boiler in a fit and proper condition to go to sea when she left here for a voyage to New Orleans or Galveston, or anywhere in that neighborhood?

A. Yes, sir; it was in every particular.

Q. Is it an unusual occurrence for tubes in those tubular boilers to blow out?

A. It is a very common thing for them to give out; a ship never goes to sea but one or more of them give out.

Q. What was the effect, either beneficial or prejudicial, in regard to the strengthening or weakening of the tube-sheet of the boiler, of plugging up the tubes that you saw?

A. It had a tendency to strengthen the tube-sheet.

Q. At whose request did you go down to make this examination?

A. I do not recollect; a notice was given to the office in writing in an official manner.

Q. There was an official notification, and you went down?

A. Yes, sir.

Q. You do not recollect from whom it was?

A. No, sir.

Q. Was this gentleman, Mr. Towner, on board when the examination was made?

A. He was.

Q. Do you recollect the date of that?

A. I cannot state the date.

Q. It was the time that Mr. Towner was there?

A. Yes, sir; I saw him there just before.

137 Cross-examination by Mr. BENEDICT:

Q. Did you ever see this boiler before that time?

A. Not to examine it closely; I have been on board the ship before, but never to inspect the boiler before.

Q. You say it was tested; how was it tested?

A. By hydrostatic pressure—cold-water pressure.

Q. There was no steam in the boiler when you saw it?

A. No, sir.

Q. Do you know how old that boiler was?

A. I do not know now, but I knew at the time; it is a matter of record in the certificate.

Q. You were told at the time how old the vessel was?

A. No; I had a certificate of the previous year in my hand, and that is a matter of record in the office; that shows the age of the boiler at the time we inspected it.

Q. Are you able to tell us how old the boiler was?

A. I cannot, without reference to the certificate of the office.

Q. Did you have more than one certificate in your hand?

A. No, sir.

Q. Do you mean to say that the certificate which you had in your hand stated how old the boiler was?

A. Yes, sir.

Q. And it was from that you derived your knowledge of the age?

A. Yes, sir, as to the boiler; but I based my idea of the boiler at the time on a personal examination.

Q. Aside from the age, you did not take that into consideration at all?

A. No, sir.

By the COURT:

Q. What do you mean to say?

A. I mean to say that I based my idea of the condition of the boiler entirely on an actual examination and not on the age; a boiler might be twenty years old and yet a very good one.

138 By Mr. BENEDICT:

Q. Have you ever been to sea?

A. Yes, sir.

Q. In what capacity?

A. I have been at sea in the capacity of engineer, and in the capacity of oiler, and in the capacity of machinist from the shop—in all capacities.

Q. What experience have you had at sea on engines?

A. My experience at sea—do you mean how long it lasted, or how long it was?

Q. Yes.

A. Probably I was at sea a year altogether at different times.

Q. As engineer?

A. Yes, sir.

Q. And in charge of the boiler and engines of the steamer?

A. Yes, sir; on regular watches.

Q. On more than one vessel?

A. Yes, sir.

Q. Did these vessels, all of them, have tubular boilers?

A. Not all of them.

Q. Did any of them?

A. Yes, sir.

Q. What was the extent of your experience on a vessel having tubular boilers?

A. I do not know how many vessels I was on exactly now with tubular boilers, but I have been to sea with a number of them—sufficient to know all about them, and everything in relation to them; I think I have been to sea with two ships with tubular boilers.

Q. Did you have any tubes give out?

A. Yes, sir.

Q. You do not consider it an improvement to a boiler to have the tubes plugged up?

A. No, sir.

Q. But the contrary?

139 A. In certain instances it might; but it is not always to the detriment of a boiler to have some of the tubes plugged up; it depends upon the condition of the boiler; very frequently we take tubes out of a boiler, when it has too much heating surface, to reduce the heating surface, sometimes to strengthen the tube-heads.

Q. Did this boiler have too much heating surface?

A. That would be a hard matter for me to define, unless I had experience of a boiler; if it was a boiler that foamed badly, it would be indicative that it had too much heating surface?

Q. Did you naturally understand that having half a dozen tubes plugged up, as that had, would be a detriment to a boiler, or not?

A. I would say it was no detriment to a boiler that had so much heating surface as that had.

Q. And it would be just as good a boiler?

A. Yes, sir.

Q. How would it be with a dozen tubes plugged up?

A. If there was a dozen tubes plugged up—if large tubes—it would reduce the heating surface.

Q. A dozen out of one hundred and fifty?

A. Yes, sir.

Q. Were those tubes of different sizes?

A. No, sir; they were all of one size.

Q. Suppose there were twenty tubes plugged up?

A. If there were twenty of these tubes plugged up it would be probably weakened.

Q. Suppose there were twenty-six of them, would that not be a serious detriment to that boiler?

A. I do not think it would be a serious detriment to this boiler, for the reason that the tubes were small.

Q. You think it would be a detriment, but not serious?

A. Yes, sir.

Q. Would you recommend the repairing of these tubes under those circumstances?

A. Yes, sir; I should if there were twenty-six of them.

Q. Or if there were twenty of them?

A. It would all depend on the size and how they were located.

140 Q. You saw this boiler, and you were asked about this boiler; if there were twenty of those tubes stopped up, would you recommend to have them repaired?

A. Yes, sir.

Q. Would you recommend those repairs if there were a dozen stopped up, and if you were going on a voyage to the Gulf of Mexico?

A. I should if they were low down.

The COURT. I understand the meaning to be this: That if there were twenty-six tubes that required some repairs—not that he would have them plugged—but if there were twenty-six tubes that required repairs, he would recommend the repairs to be made by a renewal of the tubes.

Mr. BENEDICT. My question was, if there were twenty-six tubes plugged up, whether he would recommend them to be repaired?

The COURT. You mean, to have new tubes?

Mr. BENEDICT. Either new tubes or else to repair the old ones.

The WITNESS. I understood the question, that if they were already plugged, whether I would recommend repairs other than the plugging.

Q. In what way would such repairs be made?

A. If the tubes were plugged up for want of caulking, I would have them caulked; if they were split, I would take them out and put in new ones.

Q. If they shrunk away from the tube-sheet, you might expand them?

A. Yes, sir.

Q. What is about the ordinary length of time that such a set of tubes might last, with fair use?

(Objected to as immaterial.)

A. That depends very materially on whether the vessel has a surface condenser or a jet condenser.

Q. Which did this vessel have?

A. A surface condenser.

Q. About what would be the length of time that a set of tubes like these would last, with a fair use?

141 (Objected to as immaterial.)

The COURT. The proper question is, how long these would last in the condition in which he saw them at the time—whether they would last during the voyage.

Q. What is the cause of tubes blowing out?

A. It is caused from the action of the water from the fire; that is what they give out from.

Q. If a set of tubes in a vessel have been in her some length of time, say a year or more, and upon use it is found that the tubes, one after another, are continually giving out, what conclusion would you draw from that fact as to the effect upon the tubes of the use which they had had?

(Objected to as asking for a conclusion of the witness; excluded.)

Q. Do you understand that the giving out of the tubes is an indication of the condition of the tubes?

A. I do, sir; if it gives out it is an indication of its condition.

Q. If a tube gives out, that is an indication, is it not, of one of two things—either that the tube itself is in a bad condition, or that it has been badly used?

(Objected to; admitted.)

A. A tube very frequently gives out—a bran' new tube. If tubes give out, it is an indication that they give out from one of these two causes.

Q. Which two causes?

A. Either from their condition or from their having been badly used; it is the effect of the fire being brought in contact with the metal—the heated metal in contact with the water—which causes the tube to give out.

Q. And if those boiler tubes which you saw, immediately upon the boiler being used, and without negligence in the use, had given out, that would indicate to you, would it not, that the tubes were not in good condition?

(Objected to as immaterial; excluded.)

142 Q. Would you say that a tube was in good condition which had given out after six hours' careful use?

(Objected to; excluded.)

Q. Could you tell from any examination which you made how long any of these tubes would last with careful use?

A. No, sir, I could not.

Q. The result would indicate its condition, would it not?

A. It might at the time. After they gave out, the result would certainly exhibit its condition, but it would not before.

Q. You could not tell before what its condition would be?

A. I could not tell before what its condition would be when it gave out.

Q. The fact that it gave out would indicate its previous condition, if there was no improper use?

A. Indicate its previous condition? Not at all, sir.

Q. If there was no improper use—do you say if there is no improper use of a tube or a boiler, that the immediate result of that use is no indication of what its condition was at the instant before it gave out?

(Objected to.)

The COURT. Do you understand what is meant by an improper use?

The WITNESS. No, sir.

By Mr. BENEDICT:

Q. Do you not know what an improper use of a boiler is?

A. Yes, sir; I suppose you have reference, when you speak of the improper use of a boiler, to its being made hot without any water in it. That would be an improper use, and that would cause the tubes to give out; but that was not a supposable case; in this instance the boiler was in good hands.

143 Q. Then, do you say if there is no improper use of a tube or a boiler, that the immediate result of that use is no indication of what its condition was at the instant before it gave out?

A. Does the gentleman wish me to say what its condition was before it gave out?

Q. I ask you to say whether the result is any indication of what its condition was.

A. I do not thoroughly understand the question.

The COURT. You are running a boiler which is on board of a ship, and the tubes give out; you have used it properly—not heated it up without water, but have given it a proper use, and suddenly it gives out; now, as an expert, would that indicate to you what its condition was the moment before it gave out?

WITNESS. It would to a certain extent.

By Mr. BENEDICT:

Q. Did anybody assist you in making this examination of the tubes?

A. No, sir.

Q. You went alone?

A. I went as an inspector, alone. The boiler was thrown open by the employés of the ship and I went through it; there was no other official with me.

Q. Do you recollect who went with you on the part of the ship?
A. The chief engineer was there.
Q. Mr. Sherman?
A. And the other representatives of the ship in the engineer's department.

JOSEPH L. PARRY, called by the respondents, sworn.

Examined by Mr. DONOHUE:

Q. Where do you reside?
A. In Philadelphia.
Q. Your business is what?
144 A. United States local inspector of steam vessels in the district of Philadelphia.
Q. And has been so how long?
A. This is the fourth year, nearly—four years in June.
Q. What does that call on you to do—anything about boilers?
A. Our business is to examine boilers and steam vessels, and inspect them.
Q. You inspect boilers?
A. Boilers and machinery, boilers principally.
Q. What was your business before you were inspector?
A. Steam engine builder.
Q. Where?
A. With Nathan & Levy—the Penn Iron Works.
Q. How long in that business?
A. I have been, directly and indirectly, since 1834; I have been with Nathan & Levy since 1844.
Q. Are you familiar, or not, with tubular boilers?
A. Yes; I have built a great many, or at least superintended the building.
Q. Did you see the boiler of the Francis Wright in September, 1872, before she went to Galveston?
A. I did, sir.
Q. Were you called on to do anything to it?
A. I was called on to inspect it. A regular official application was made, signed by the officers of the ship, to inspect the ship.
Q. Did you inspect the boiler?
A. I did, sir.
Q. Was it in a fit and proper condition to go to sea?
(Objected to.)
Q. Do you know the condition of vessels going to the Gulf ports from Philadelphia?
A. Yes, sir; we have other vessels going in that neighborhood—to ports in the Gulf.
Q. Ha e you inspected the boilers?
A. Yes, sir; inspected them all in our district.
145 Q. Did you test this boiler?
A. Yes, sir; in the usual method—hydrostatic pressure—cold water.
Q. What was its condition as to being good or bad?
A. The boiler stood the test very well. The test required by the government is one-third more than the amount of steam carried. That boiler stood a hydrostatic test of forty-seven pounds; I allowed thirty-five pounds.
Q. Did it stand the forty-seven pound test well?

A. Yes; no leaks.

Q. Was that boiler fit and proper to be used going with the steamer to the Gulf of Mexico?

(Objected to.)

Q. Do you recollect how many tubes were plugged when she came to Philadelphia?

A. I think there were five, as near as I can recollect.

Q. You saw the number of tubes plugged up on that vessel in Philadelphia; was that boiler in a fit and proper condition for her to perform the voyage to Galveston?

(Objected to.)

Q. Did you sound the boiler?

A. I examined the boiler in the usual way, with a hand-hammer and general observation. The time allowed generally for inspecting is not quite as much as it ought to be. Sometimes the ship is in a hurry; but in the time I had I made a good examination.

Q. Did you examine the plugged tubes with your eye and hammer?

A. Yes, sir; the tubes were as good as usual—insomuch that I gave a certificate for the ship to go to sea.

Q. Now, I ask you the question, was that boiler in a fit and proper condition for her to perform the voyage to Galveston and back?

(Objected to; admitted.)

A. Yes, sir; the boiler was fit to go. I would have been willing myself to have gone to sea upon her.

146 Cross-examined by Mr. BENEDICT:

Q. I understand you to mean that, so far as anything that you discovered at the time, you judged it to be in a fit and proper condition?

A. Yes, sir; at that time. Of course, I had not anything more to do with the boiler after I examined it. I examined it, and loaded the safety-valve accordingly.

Q. When you say it was in a fit and proper condition, do you mean anything else except that at that time you judged it to be so?

A. I had no means of judging in any other way at that time, of course.

Q. And what you mean to swear now is, that that was your judgment then?

A. Certainly; after that I did not see the ship. After she went to sea I had nothing to say about her.

Q. Do you mean to give us anything else now than what was your judgment then?

A. I have nothing more to say in regard to it than at the time of inspecting the boilers, and I gave a certificate to that effect.

Q. That was your judgment then?

A. Yes; tubes are not always stopped up because of a leak.

Q. How were these tubes plugged up?

A. With rod and washer.

Q All of them?

A. They were—the five I saw at the time.

Q. None of them with wooden plugs, simply?

A. No; I did not see any wooden plugs.

Q. Have you seen a great many boilers similar to this?

A. I have; a great many.

Q. How many tubes did this boiler have?

A. I cannot recollect without referring to the certificate; I see so many and count so many; it is recorded on the certificate.

Q. Can you tell me, in any way, how many tubes she had exactly? I should like to know.

147 A. I cannot tell.

Q. Have you anything to look at by which you can determine?

A. Not unless I was in my office at home; I have a record of everything there.

Q. Are you able to judge from your experience as to whether a boiler is so constructed as to have too much heating surface?

A. I consider I am.

Q. What do you say about the amount of heating surface of this boiler, as to whether there was too much or too little?

A. I did not measure it, and cannot say.

Q. You cannot tell whether this boiler had too much or too little heating surface?

A. I cannot tell.

Q. You did not investigate that point of it?

A. No, sir; it is not part of my business.

Q. And you do not know whether these tubes being stopped up was on account of any difficulty in the heating surface, or from a leak in the tubes?

A. Not of myself; the representation was that it was a good steaming boiler, but I do not know myself.

Q. Then you are not able to say whether the stopping up of a dozen tubes on the boiler would have affected its capacity?

A. I am not sure.

WILLIAM H. PHILLIPS, called by the respondents, sworn.

Examined by Mr. DONOHUE:

Q. What is your business?

A. Machinist and engineer.

Q. As machinist, do you have anything to do with boilers?

A. Yes, sir; boilers and steam engines, and machines in general.

Q. How long have you been repairing or building boilers?

148 A. I have been in the business ever since I was sixteen years old; I am now thirty-two.

Q. Have you ever been to sea?

A. Yes, sir.

Q. How much?

A. About a year and a half.

Q. Do you know these tubular boilers?

A. Yes, sir.

Q. Were you employed at any time to put the boiler of the Francis Wright in order?

A. I was.

Q. Did you see the boiler?

A. I did.

Q. Can you give us the date?

A. Last time was in September some time; I cannot give the date.

Q. What September?

A. Last September; previous to her going to Philadelphia, and from there to Galveston.

Q. Where was she?

A. Alongside of Catherine Ferry, Brooklyn, and on a dock, end of Pike street.

Q. What was the condition of that boiler when you repaired it, after it was repaired—in good or bad condition?

A. It was in good condition.

Q. Did you ever repair boilers of boats going to the Gulf?

A. Yes, sir.

Q. Was or not that boiler fit for a voyage to the Gulf of Mexico?

A. The boiler was in a fit condition to go to the Gulf of Mexico, I should judge.

Q. I mean there and back?

A. Yes, sir.

Cross-examined by Mr. BENEDICT:

Q. Who employed you to put this boiler in order?

A. Woodhouse & Rudd.

149 Q. How long was that before she started to Philadelphia?

A. I finished two days before she started, or three days; I am not positive—either two or three days.

Q. Who had charge of the vessel when you were making repairs?

A. Mr. Sherman was engineer.

Q. He had charge of the vessel, had he?

A. Of the engineer's department.

Q. Do you know Captain Denison?

A. I do not.

Q. You do not know whether he was there?

A. I saw the gentleman there, I think, the morning she sailed.

Q. I mean while you were making the repairs?

A. No, sir.

Q. You say this was the last time you repaired her; when did you repair her before that?

A. I did repairs about a year before that, on the engine and boilers.

Q. Did you build the boiler?

A. No, sir.

Q. Who did?

A. I do not know.

Q. Did you ever repair her more than these two times?

A. No, sir.

Q. You do not know how old the boiler was?

A. I do not.

Q. Do you know how long she had been lying at the foot of Catharine street?

A. I do not.

Q. Had you ever seen her there before you went there to do that work on her?

A. Yes, sir.

Q. How long before?

A. I cannot tell; it might have been a month, or it might have been more.

Q. What did you do to the boiler when you made these repairs?

150 A. I expanded the tubes, and drove a hard patch in the furnace and a soft patch on one of the legs outside.

Q. How many tubes did you expand?

A. All that required it; I cannot recollect the number.

Q. Can you give us any idea?

A. Probably.

Q. What was the cause of their needing to be expanded?

A. They looked as though they wanted expanding; they did not leak; they looked as though they wanted expanding, and I expanded them.

Q. The repairs that you made on the boiler a year before, what were they?

A. I put in a number of new tubes, and hard patches in the furnace.

Q. Did you expand any of the tubes at that time?

A. No, sir.

Q. Did you plug up any of the tubes?

A. I did not; I took the rod out of one, and put a new rod in again in one that was plugged.

Q. How many tubes were plugged?

A. Five.

Q. Did you plug them yourself?

A. Only that one.

Q. On the previous repairs, you did not plug them?

A. No, sir.

Q. Were they plugged at the time you did repairs there before?

A. No, sir.

Q. Then these tubes had been plugged up between the time of your first repairs and the second repairs by you?

A. Yes, sir.

Q. Do you know who plugged them?

A. I do not.

Q. You say that Woodhouse & Rudd employed you; who was the party that talked with you?

A. I think I got the order from Mr. Towner.

Q. What order did he give you?

A. To go on board and see if the engine and boiler wanted repairing, and to do what was required.

151 Q. Did he refer you to the engineer about the matter?

A. Yes, sir.

Q. What did he tell you about the engineer?

A. He said the engineer would be there.

(Mr. Donohue objects.)

Q. What, if any, directions did Mr. Towner give you as to conferring with Mr. Sherman?

(Objected to on the ground that the witness has not been asked anything about any conversation on the direct examination, and that it is not competent to prove by the witness any direction from or conversation with Mr. Towner. Objection sustained.)

Q. You say you have been to sea about a year and a half; in what capacity?

A. First assistant engineer.

Q. On what vessel?

A. On the Ariadne, to Galveston.

Q. You have testified that you should judge the boiler was fit to go on such a voyage?

A. Yes, sir.

Q. Do you mean any more by that than that in your judgment, at that time, it was fit to go?

A. I judged she was fit to go on that route.

Q. Then did you mean, by your answer, that you did judge, at that time, she was fit to go?

A. Yes, sir.

Q. Did you recommend the repairing of those tubes that were plugged?

A. No, sir.

Q. Did you ever have any conversation with Woodhouse & Rudd, or either of them, as to whether these tubes should be repaired?

A. No, sir.

Q. Or with Mr. Towner?

A. I do not recollect.

Q. Do you know how old the boiler was?

152 A. I do not.

Q. Nor how long those tubes had been in use?

A. No, sir.

JAMES SHERMAN, called by the respondent, sworn.

Examined by Mr. DONOHUE:

Q. What is you present business?

A. Captain of the steamboat Sleepy Hollow.

Q. How long have you been captain of her?

A. Four years this spring.

Q. What kind of boiler does she use?

A. A tubular boiler.

Q. Before you were captain of her, what was your business?

A. The year before I was in the steamboat George Washington, as captain; previous to that I had charge of Garrison & Allen's line of steamships here.

Q. Had you ever any experience as an engineer in boilers?

A. Yes; I served my time.

Q. When was that?

A. I have been connected with steamships the last twenty-five years.

Q. Did you serve your time as an engineer?

A. Yes, sir.

Q. Did any of the boats on the Garrison & Allen line have tubular boilers?

A. Yes, sir.

Q. You say that you are now captain of the Sleepy Hollow; how many tubes has she in each boiler?

A. I think one hundred and fifty in each boiler.

Q. Are they all open or plugged up?

(Objected to.)

Mr. Donohue offers to show that the Sleepy Hollow was now running with fifteen tubes plugged up in each boiler to reduce the fire surface.

153 (Excluded.)

Q. Is it anything uncommon or unusual for those tubes to blow out?

A. No, sir; I have seen them blow out every other day from here to Galveston, and maybe again you would not have one blow out for a week or a month.

Q. You are not the Mr. Sherman that was on board the Francis Wright?

A. No, sir.

Cross-examined by Mr. BENEDICT:

Q. Are you any relation to Mr. Sherman, the engineer on the Francis Wright?

A. I am a brother of his.

The respondents rest, with the exception of one witness in Washington.

JOSEPH BELKNAP, called for the respondents, sworn.

Examined by Mr. DONOHUE:

Q. What is your business?
A. I am constructing and consulting engineer.
Q. And have been in that business how long?
A. Over thirty-eight years.
Q. Acquainted with engines and steam boilers?
A. Yes, sir.
Q. And have been how long?
A. For that length of time.
Q. Did you ever see or examine the boiler of the Francis Wright?
A. I did, sir.
Q. When?
A. On the 11th of December last.
Q. Where was the vessel?
A. In Philadelphia—or rather at Camden, opposite Philadelphia.
Q. What was its condition as to seaworthiness?
154 A. Good.
Q. Have you yourself ever had any sea experience?
A. I have, sir.
Q. To what extent?
A. Well, I have been engaged during nearly the whole of that time in building marine engines, and have had more or less experience in navigation on the coast between New York and Savannah, and Charleston and Boston, and other places around the coast, at different periods.
Q. Are you familiar with what are called tubular boilers?
A. Yes, sir; very.
Q. Is it or is it not unusual for those tubes to blow out?
A. It is not unusual.
Q. How long did you hold the office of supervising inspector general?
A. About fifteen months.

Cross-examined by Mr. BENEDICT:

Q. Where do you live?
A. At 346 West 31st street, New York.
Q. You went on from here to Philadelphia to examine this vessel?
A. Yes, sir.
Q. At whose request?
A. At Mr. Towner's, of Woodhouse & Rudd.
Q. This was a private employment?
A. Yes, sir; I am not connected now with the government inspection and I was not at the time that I made this examination.
Q. When you got to Philadelphia, did you see Messrs. Duncan & Poey?
A. I did not, sir.
Q. Who did you see on board the vessel?
A. I saw Mr. Sherman, the engineer, and I think the second mate; I took him to be the second mate of the vessel; also the captain; the captain came on board after I came on board—I saw him on board.
Q. Did you have any conversation with him?
155 A. Nothing, except to pass the time of day—nothing in regard to the vessel.
Q. Did he know your name and occupation?
A. I presume so; I was introduced to him by name.
Q. Did he know that you were not a merchant or something else?

A. Mr. Mershon, the general supervising inspector of hulls at Philadelphia, introduced me to the captain.

Q. This introduction to the captain was after you had examined the boiler?

A. Yes, sir.

Q. Was there steam in the boiler?

A. There was not.

Q. What was your examination; how did you examine it?

A. I borrowed a suit of regimentals from the engineer, dressed myself up, and went through the boiler with a hammer and examined it critically.

Q. Were any of the tubes plugged?

A. Yes, sir.

Q. Did you examine them?

A. I did, sir.

Q. How many tubes were plugged?

A. Twenty-six.

Q. Do you know the age of the boiler?

A. The certificate said that it was built in 1870.

Q. Do you know who built it?

A. No, sir.

Q. Nor where it was built?

A. Nor where it was built.

Q. Did you have any other information with regard to the boiler than the certificate?

A. My examination.

Q. I mean before you examined the boiler?

A. No, sir; I had never seen it before.

Q. How many tubes did it have?

A. One hundred and forty-four.

Q. Are you able to tell whether the tube surface was disproportioned in a boiler of one hundred and forty-four tubes?

156 A. No, sir, not now; I did not make any calculation about that.

Q. If a tube surface of one hundred and forty-four tubes were not too many, would you or not say that the plugging up of the tubes was an injury to the boiler?

A. Yes, sir; it would reduce the steaming capacity, if there was not too many.

Q. Are you able to state whether the steaming capacity of the boiler surface was or was not too great at this time when you saw it?

A. I am not.

Q. I mean with the twenty-six tubes off?

A. I am not able state whether it was too great or too small; I have my opinion about that, but I am not able to say from calculation.

Q. Did you see any indications of any other tubes than those twenty-six having been repaired?

A. No, sir.

Q. Were you informed as to whether any other tubes had been repaired?

A. The engineer told me there had been some new tubes put in the boiler; but these gave out before the voyage was commenced.

Q. Before the voyage was commenced?

(Respondent's counsel objects to what the engineer told him.)

Q. You did not see any marks on any of the tube-sheets of any repairs from plugging?

A. No, sir.

By the COURT:

Q. State on what you founded your judgment.

A. I founded my judgment wholly on the certificate and on ocular demonstration.

By Mr. BENEDICT:

Q. Do you call the condition of those tubes that had been plugged, good?

157 A. They were well plugged; but the tubes were not good per se.

Q. So far as they, at least, were concerned, the condition of the boiler was not good?

A. No, not so far as these tubes were concerned.

Q. Was there any one else present at the time that you made the examination, except Mr. Sherman?

A. Yes, sir; Mr. Mershon, the inspector of the hulls, was present; he did not go through the examination with me, but he was on board the ship part of the time, in the fire-room.

Q. Did any one except yourself assist in this examination?

A. No, sir, not at the time I examined, except Mr. Sherman, and his fireman assisted me by holding lights for me, and taking the plates off the boiler, and matters of that kind.

Redirect:

Q. Speaking about the tubes—the only effect of plugging the tubes was to stop so much of the heating surface?

A. Yes, sir; it would take off so much of the heating surface from the boiler.

Q. Have you known tubes stopped up for the purpose of preventing too much heating surface?

(Objected to; excluded.)

JOHN A. SHERMAN, called by libellants, sworn:

Examined by Mr. BENEDICT:

Q. What is your business?

A. Engineer.

Q. Where do you live?

A. At Greenpoint, No. 224 Eckford street.

Q. How long have you been an engineer?

A. About eighteen years.

158 Q. You were engineer on board the Francis Wright on this trip to Galveston?

A. Yes, sir.

Q. How long had you known the Francis Wright?

A. Before this trip, about a year.

Q. Had you been engineer on her during that time?

A. Yes, sir.

Q. During the whole of that time?

A. No, sir; for about four months.

Q. You began to be engineer on her about four months before this trip commenced?

A. No, sir; it was a year before that that I was in her for four months.

Q. State when you first joined her?

A. I think in October, 1871.
Q. And then you were on her about how long?
A. About four months.
Q. Where did she run during that time?
A. To Brazos, Texas, one trip, and two trips to Wilmington.
Q. Then did you leave her?
A. Yes, sir.
Q. And she laid up there, did she not?
A. Yes, sir.
Q. Laid up until this trip to Galveston?
A. Yes, sir.
Q. On this trip to Galveston, did you keep an engineer's log?
A. I did.
Q. Where is it?
A. I think it is here.
(Log produced.)
Q. Did you make the entries in this log yourself?
A. Yes, sir.
Q. At the time?
A. Yes, sir.
Q. Look at the 6th of October, the entry there; was there any leak in the boiler that day?
159 A. There is none reported here; I do not remember that there was.
Q. Look a little more carefully.
A. Yes, there is: "Tube leaking in the port box of boiler; plugged it up."
Q. Was that a fact; was there a tube leaking on that day, and did you plug it up?
A. Yes, sir; I suppose so.
Q. Turn to the 8th of October; did you discover a leak on that day?
A. Yes, sir.
Q. What time of day?
A. 2 o'clock in the morning.
Q. Did you stop the ship?
A. Not then; we stopped afterwards.
Q. When?
A. At 9.30 a. m.
Q. What did you do?
A. We swept the tubes and cleaned the connections; boiler steaming hard.
Q. The boiler was not steaming when you swept the tubes?
A. No; that is what we stopped for; we swept them, cleaned the connections, and stopped up two of the tubes with rods and caps.
Q. When did you start the engine again?
A. At 3.40 a. m.
Q. Now, on October 12, did you have any difficulty with the tubes?
A. Yes, sir.
Q. What was it?
A. One tube was leaking.
Q. At what time?
A. At 6 a. m.
Q. Did you stop the engine on that day?
A. Yes, sir; we stopped at 8.30 a. m.
Q. What did you do with the tube?
A. We stopped up one tube.

Q. Did you do anything to any other?

160 A. The one that had been stopped up we renewed the cap on it, and started again at 11.05 a. m.

Q. Turn to the 13th; did you have any difficulty with the tubes on that day?

A. Yes, sir; one was leaking.

Q. Blew out?

A. No, sir; it leaked in the end.

Q. Is not the entry, "Blew a tube out"?

A. Yes, sir; but that tube did not blow out; we stopped it up, though.

Q. Stopped it up with what?

A. With a wooden plug—we lost no time.

Q. Did you stop it with two plugs?

A. Yes, sir; one at each end.

Q. Turn to the 17th; did you have any difficulty with the tubes that day?

A. Yes, sir; we stopped one hour and twenty minutes; plugged tubes.

Q. How many tubes did you plug that day?

A. The log does not state.

Q. Do you know without its stating?

A. No, sir; but I think one or two; only one, I think.

Q. Why did you write "plugged tubes," then?

A. I don't know why I wrote it.

Q. Turn to the 22d of October; did you stop any tubes on that day?

A. We were at Galveston on that day, doing general repairing; we did.

Q. How many did you stop?

A. We stopped eight.

Q. Turn to the 31st; what time did you leave Galveston wharf?

A. At 11 a. m.

Q. Did you have any difficulty with the tubes that day?

A. Yes, sir.

Q. What?

A. Discovered boiler to be leaking at 4.30 p. m.; at 7 p. m. stopped to repair boiler tubes; found twenty-six tubes leaking.

161 Q. Whereabouts?

A. In the back connection of the boiler.

Q. When did you get steam on the main boiler again?

A. We were detained there fifteen hours; got steam on the main boiler at 10 a. m., on the morning of November first.

Q. What was the condition of the tubes then?

A. All tight but one.

Q. What did you do with the vessel?

A. The captain went back to Galveston.

Q. Did you have tools enough to repair the tubes?

A. Yes, sir.

Q. Did you not enter in your log, "Not having sufficient tools to repair them properly"?

A. I did, at the captain's request.

Q. You did make that entry?

A. Yes, sir.

Q. What is the entry?

A. "Not having sufficient tools to repair them properly, and after

consulting with the captain, we decided to run back to Galveston to get tools and repair the boiler; arrived at Galveston wharf at 4 p. m."

Q. What is the beginning of the entry?

A. "At 10 a. m. steam on main boiler again; tubes all tight but one;" then follows what I have read.

Q. What tools was it you did not have?

A. An expanding tool.

By the COURT:

Q. I understood you to say you had tools enough?

A. We had tools enough; the captain wanted an expanding tube to expand the tubes, which we did not have; but we had tools enough to repair the boiler then.

Q. You did not have a tube expander?

A. No, sir.

By Mr. BENEDICT:

Q. When you got to Galveston what did you do to get a tube expander?

162 A. I went to two shops and tried to find one; they had none.

Q. What did you want a tube expander for?

A. I did not want one; the captain thought——

Q. You did not want one at all?

A. No, sir.

Q. What was the use of the tube-expander?

A. They are used to expand tubes.

Q. For what purpose?

A. To make the tube tight if there is any leaking.

Q. Could you repair the tubes without a tube-expander so as to use them?

A. Yes, sir.

Q. So as to use them?

A. Yes, sir.

Q. How?

A. We had repaired them with peening hammer and beating tool.

Q. Did you not use the tube-expander when you got it?

A. Yes, sir.

Q. What did you use it on?

A. On two tubes.

Q. Only two tubes?

A. Yes, sir.

Q. When you found you could not get the tube-expander at the two shops, what did you do?

A. We got the proprietor of a shop to telegraph to New Orleans for one, at the captain's request.

Q. Did you get a telegram back?

A. Yes, sir.

Q. What was the telegram?

A. "There is no tube-expander in the city of the size you wish."

Q. When did you get that?

A. November 5th.

Q. What did you then do when you got that telegram that there was none?

A. I went to the shop and had one made.

163 Q. Now read the first sentence of the entry on November 6th.

A. "Expanded forty tubes; put in six ferules"—we did not expand forty tubes.

Q. Whereabouts does it say?

A. In the back connection; "expanded forty tubes and put in six ferules in the back connection of main boiler."

Q. Were the twenty-six tubes entered as leaking on the 31st of October part of these forty tubes that are entered here?

A. No, sir; one was; we put a ferule in one of the twenty-six.

By the COURT:

Q. I understood you to say you did not expand forty tubes?

A. They were not expanded.

By Mr. BENEDICT:

Q. That entry on the 6th of November is in your handwriting?

A. Yes, sir; copied from the slate; my first assistant had put it down on the slate.

Q. When you wrote it down, did you understand it to be true at that time?

A. I thought it was true at that time.

Q. You copied it from the slate on which your first assistant had written it?

A. Yes, sir.

Q. You had charge of making these repairs on the engine?

A. Yes, sir.

Q. And you knew what repairs were done on it?

A. No, sir.

Q. You did not know at the time what repairs were done?

164 A. Not all; that is, in the back connection; I could not get in there at the time; I left it to the first assistant engineer.

Q. What is his name?

A. Hoffman.

Q. What is his full name?

A. Philip Hoffman, I think.

Q. Where does he live?

A. In Jersey City.

Q. Do you know whereabouts in Jersey City?

A. No, sir, I do not; but he is not at home; he is in a steamer running between Havana and somewhere.

Q. I understood you to say that only one of those tubes that are mentioned in the entry of October 31 was one of the forty mentioned in the entry of November 6th?

A. Yes, sir; that is, one of the forty was one of the twenty-six that blew out.

Q. How do you know that was one of them?

A. Because I saw the tube that leaked, and afterwards I saw it was stopped up.

Q. Did you have anything to do with mending that yourself?

A. Not at the back; I was at the front end of the boiler; after I got through I examined it all and saw they were tight.

Q. Examined the whole 40?

A. The whole tubes; after they got through I examined the whole boiler and saw they were all tight.

Q. If they were all tight how do you know that they were not all expanded?

A. He told me afterwards they were not.

Q. If they were tight there was no need of expanding them?

A. No; there was no need of expanding them.

Q. Whether they were expanded or not, when you examined them they were all tight?

A. Yes, sir; there was one leaking when we went in, and I told him to put a ferule into that one, which he did.

165 Q. When you repaired these twenty-six tubes that blew out, that were leaking on the 31st of October, how did you repair them?

A. With peening hammer and beating tool.

Q. You did not plug them up?

A. No, sir.

Q. Not any of them?

A. No, sir.

Q. These six fer'ules that you say were put on, were any of them put on the twenty-six tubes?

A. Only one; after we got back to Galveston one went into one of the twenty-six tubes.

Q. Where did the other five go?

A. Into the other box—into the centre box of the boiler.

Q. What was the occasion of putting these fer'ules there?

A. I thought possibly they might give out, although I had no indications of their giving out.

Q. No indications at all?

A. No, sir.

Q. What made you pick these five tubes out to have fer'ules on?

A. There were five tubes in one row without fer'ules. I told them to fill out this lower rod with the five fer'ules which we had left.

Q. Were those all the fer'ules you had left?

A. No; we had two or three left afterwards. I think we used two or three afterwards.

Q. Can you tell me, when you started from Galveston the first time, how many tubes you had plugged?

A. No, sir; I cannot.

Q. Look at the entry on October 25; did you have difficulty with the tubes on that day?

A. Yes, sir.

Q. What difficulty?

A. We stopped two of them up; one was leaking, and we stopped two; that was when we were lying at the wharf at Galveston.

Q. But under steam?

A. Yes, sir.

Q. "Blew a tube out" is the entry on that day?

166 A. Yes, sir.

Q. In the main boiler?

A. Yes, sir.

By the COURT:

Q. Does the entry, "Blowing a tube out," indicate that you stopped it up?

A. No, sir; there is also an entry of stopping it up.

By Mr. BENEDICT:

Q. Turn to the 10th of November; did you have a difficulty with the tubes on that day?

A. Yes, sir.

Q. What was it?

A. One was leaking in the front connection of the main boiler.

Q. What did you do with it?

A. We plugged it with two wooden plugs; no time lost.
Q. Turn to the 15th of November; did you have any difficulty with the tubes on that day?
A. We found one leaking.
Q. That is not the entry, is it?
A. Yes, sir; "Tube leaking; boiler steaming hard; tube leaking hard."
Q. Read the other entry.
A. "Blew tube out in the middle box of the main boiler"; that is the first entry.
Q. What time was that?
A. 7.50 a. m.
Q. Now, what is the other with reference to the tube?
A. "Tube leaking bad."
Q. What time is that?
A. From eight to twelve.
Q. The same tube?
A. Yes, sir; we let it leak; did not plug it.
Q. Turn to the 14th; then you were at Key West?
A. Yes, sir.
Q. Did you stop any tubes there?
A. Yes, sir; this one that was leaking.
167 Q. How did you stop it?
A. With rod and cap.
Q. Turn to the 16th; was there any difficulty with the tubes on that day?
A. Yes, sir; one leaked.
Q. Read the entry as it is.
A. "Blew one out."
Q. What time was that?
A. 4.30 p. m.
Q. Whereabouts in the boiler?
A. Middle box.
Q. There is a subsequent entry with reference to this leaking?
A. "From 8 to 12, tube leaking."
Q. Now turn to the 17th; how was it about the tubes that day?
A. Tube leaking, too.
Q. Now on the 18th; any difficulty with them on that day?
A. That day we stopped.
Q. When did you stop?
A. 2 p. m.
Q. When did you start again?
A. 9 p. m.
Q. During that time, what did you do with the tubes?
A. Stopped up three of them.
Q. How?
A. Stopped up three with rods and caps.
Q. Now turn to the 21st; any difficulty with the tubes that day?
A. Yes, sir.
Q. Did you stop?
A. Yes, sir; stopped at 11 a. m.
Q. How long were you detained?
A. Five hours.
Q. What repairs did you do on the tubes that day?
A. Put on three fer'ules, and stopped up one with rod and cap.

Q. Now on the 22d; did you stop any tubes on that day?

168 A. No, sir; that comes in on the afternoon of the 21st; it is dated the 22d; nautical time, 12 to 4 p. m.; we stopped on the 21st, in the morning, from 8 to 12 in the forenoon; from 12 to 4 in the afternoon, the same day, we were repairing the three tubes; detained five hours.

Q. Then your entries go on, and on the 22d stopped up one tube again?

A. No, sir; it is the same tube; we stopped at 11 o'clock in the forenoon, and worked until 4 o'clock in the afternoon—detained five hours—with the same tube; put on three fer'ules and stopped up one with a cap.

Q. Now on the 22d?

A. That is the 22d nautical time.

Q. Go back to the entry on the 21st, at 11 a. m., you stopped the engine then?

A. Yes, sir.

Q. How long after that did you arrive at Delaware City?

A. The next morning or that night.

Q. How many hours after 11 a. m. on the 21st did you arrive at Delaware City?

A. Twenty-five hours.

Q. Did you stop up one tube at Delaware City?

A. Yes, sir.

Q. That was not the same tube that you had stopped up twenty-four hours before?

A. No, sir; that would be on the 23d, nautical time.

Q. Do you recollect being on board the vessel when Mr. Belknap came down there?

A. Yes, sir.

Q. Had there been any repairs done to the boiler before he came, after you got to Philadelphia?

A. No, sir.

Cross-examined by Mr. DONOHUE:

Q. The paper from which you have been reading is what?

A. The engineer's log.

Q. Log of what?

169 A. Of the steamship Francis Wright.

Q. On the voyage in question?

A. Yes, sir.

Q. In your handwriting?

A. Yes, sir; I wrote it.

Q. Where was it kept?

A. Kept in my room most of the time.

Q. Is it or not a usual and customary book to keep?

A. Yes, sir.

Q. How many engineers had you?

A. Two assistant engineers.

Q. One was Hoffman; who was the other?

A. John Goetchius.

Q. Was this log book where the captain could see it, or did he see it?

A. Yes, sir; he saw it part of the time, and made a copy into his own book from mine.

Q. Was a record kept of the pressure on the boiler and the vacuum and revolutions and other matters stated here during the time?

A. Yes, sir.
Q. And put down?
A. Yes, sir.
Q. And that which you hold there is the book?
A. Yes, sir.
Q. As to the steaming of the vessel on the way home compared with going out, which was the most—going out or coming home; I mean the quantity of steam and revolutions?
(Objected to on the ground that the facts must be proved.)
Q. Were these entries kept correctly?
A. Yes, sir; I copied them from the slate.
Q. And they were the entries made at the time on the slate?
A. Yes, sir.
Q. And this book shows when your own watch was?
A. Yes, sir.
170 Q. And these you know of yourself?
A. Yes, sir.
Mr. Donohue offers the book in evidence on the ground that it is a record kept by Hoffman and Goetchius, agents of the libellants, during the voyage, and by this witness, who swears to his own entries.
(Objected to; excluded as a whole.)
Mr. Donohue offers the log book out of which the witness has been reading the extracts which he has given.)
(Received by consent of Mr. Benedict, subject to objections to the whole or any part of it.)
Q. Now about this question about blowing out, what does that mean?
A. By the tube blowing out we mean that it blows out a hole perhaps the size of a pea.
Q. It means something that the tube does?
A. Yes, sir.
Q. When you enter "blowing out a tube," you mean that the tube blew out?
A. Yes, sir; a little hole.
Q. All that you know of the blowing out is that you found it leaking?
A. Yes, sir.
Q. Technically, when you find it leaking you call it blowing out?
A. Yes, sir.
Q. The pressure of the steam creating a leak.
A. Yes, sir.
Q. When you went first to Galveston, was it necessary to go back?
A. No, sir.
Q. Why did you go back?
A. By the captain's orders; he insisted upon going back.
The witness retires to examine the log-book.

171 JOHN SHAW recalled by the libellants.

Exemined by Mr. BENEDICT:

Q. Have you been examined before as a witness in this matter?
A. Yes, sir.
Q. You have heard the testimony of Mr. Sherman with reference to the breaking of these tubes?
A. I have.
Q. Assuming that testimony to be correct, as to the breaking of the tubes on the voyage out, what would you say was the condition of that set of tubes at Galveston?

(Objected to on the ground that it is simply giving an opinion as to what the witness did not see; ruled out in the present form.)

Q. Assuming that at the commencement of the voyage from Philadelphia five tubes were stopped with rods and caps; that on the 6th of October a tube leaked and was plugged; that on the 8th of October two tubes were stopped with rods and caps; that on the 12th of October one tube blew out and was stopped up; that on the 13th of October one tube blew out and was stopped with wooden plugs; that on the 17th of October one or more tubes were plugged, and that on the 18th the vessel arrived at Galveston; that on the 22d eight tubes were stopped with rods and caps; and on the 25th of October a tube was blown out, and two tubes stopped up with caps and rods, what would you say was the condition of the tubes of that boiler as to seaworthiness, in respect to going to sea from Galveston?

(Objected to on the ground, first, that witness is not competent to give an opinion on what he has not seen; and, second, that he is not shown to have had experience so as to be qualified to give a judgment; objection overruled; exception.)

172 A. I would consider, in my opinion, that she was not safe to come on the northerly voyage.

Q. Assuming the same facts as in the last question, and assuming also that she, leaving Galveston at 11 o'clock in the morning, at 7 o'clock on the same day twenty-six tubes of the boiler are found to be leaking, what would you say as to the condition of the vessel when she started from Galveston as to seaworthiness?

(Same objection as to the question being hypothetical, and the witness not being competent to answer; objection overruled; exception.)

A. I would consider her not seaworthy.

Cross-examined by Mr. DONOHUE:

Q. You have given us your experience when formerly examined?
A. Yes, sir.
Q. In whose employment are you now?
A. I am in the employ of S. & J. M. Flanigan.
Q. Sent on by them here?
A. I am ordered here by Mr. Benedict.
Q. Did he give you the order in Philadelphia?
A. No, sir.
Q. Who gave you the order in Philadelphia?
A. Mr. Poey.
Q. When?
A. Yesterday.
Q. Which Mr. Poey.
A. I don't know but one—Mr. Simeon Poey.
Q. Where was he when he gave you the order?
A. In S. & J. M. Flanigan's office.
Q. You are in the employment of Flanigans all the time?
A. Yes, sir.
Q. And have been ever since you have been here?
A. Yes, sir.

Redirect:

Q. Are you sure that it was Mr. Poey or Mr. Duncan who told you to come?
A. Mr. Poey.

173 SIMON POEY, called by the libellants, sworn:

Examined by Mr. BENEDICT:

Q. You are one of the libellants in the case?

A. Yes, sir.

Q. Do you recollect seeing Mr. Rudd in Philadelphia on the day this charter was signed?

A. Yes, sir.

Q. Where did you see him?

A. At our office.

Q. Did you have any conversation with him as to the engineer?

(Objected to; taken subject to objection.)

A. I did.

Q. When was this conversation?

A. The morning that the charter party was signed.

Q. Was it before the charter was signed?

A. It was.

Q. Now please state the conversation.

A. Mr. Rudd told us that he had an engineer; he said he would like to have some one that would take care of his machinery, and he named Mr. Sherman, saying that he would pay him $50 a month in addition to what we were to pay him.

Q. Did you know Mr. Sherman at all?

A. No, sir.

Q. Did you have any conversation before the charter party with him as to any alterations that were to be made in the vessel?

(Objected to; admitted—for the purpose of aiding the court in the construction of the clause in the charter as to returning the vessel in the same condition—subject to objection.)

A. I did.

Q. State that conversation?

A. I told Mr. Rudd that we had to put in machinery and line
174 the hold of the ship, and that we would have to cut a hole through the main deck for the refrigeration process, and he agreed that we should do it.

Q. State what he said.

A. He said we could do it, providing it did not injure the ship.

Q. Was there anything said about taking them out again?

A. I do not remember that; we understood, of course, that we had to take them out.

(Objected to.)

Q. Do you recollect in that conversation whether anything was said about refrigerators?

A. We explained to Mr. Rudd what we were going after.

(Objected to.)

Q. You were asked whether anything was said about the refrigerators?

(Objected to; taken subject to objection.)

A. We explained to him that we had to put in these refrigerators?

Q. Was there anything said between you and him as to who was to order whatever repairs were necessary to the engines and boiler?

A. Yes, sir.

Q. What was that?

(Objected to; taken subject to objection.)

A. He said that Mr. Sherman had been instructed by him to put the engines in thoroughgoing repair.

Cross-examined by Mr. DONOHUE:

Q. Where were you in December last?

A. In Havana.

Q. Were you in Philadelphia when this vessel came there on her return?

175 A. No, sir.

Q. Were you there at any time while she was at Philadelphia, after she returned?

A. No, sir.

Q. You were not in Philadelphia at any time after her return, while she was there?

A. No, sir; not while she was there.

Q. When did you get back from Havana?

A. On the first of January.

Q. Do you know the firm of Rhionda, Polledo & Co.?

A. I do.

Q. Do you know, of your own knowledge, of an offer by your firm to them to charter this steamer after her return to Philadelphia?

A. No, sir.

Q. You are sure of that?

A. I am.

Q. You were not in Philadelphia on her return?

A. No, sir.

Q. Do you mean to swear, of your own knowledge, that your firm never wrote a letter to these gentleman about this vessel?

(Objected to; excluded.)

Q. Do you know this gentleman here (Mr. Starbuck)?

A. Yes, sir.

Q. Did you ever see Mr. Rudd, except in Starbuck's presence?

A. No, sir.

Q. You are positive that you saw Mr. Rudd, and talked with him?

A. Yes, sir.

Q. Can you give us the date?

A. About the 13th of September.

Q. Does that mean on that day, or another day?

A. I think it was that day.

Q. Who else besides Mr. Rudd was there?

A. My partner was there.

176 Q. Who else?

A. Mr. Flanigan, of Philadelphia—Stephen Flanigan—and Mr. Starbuck—I did not know his name at that time.

Q. Who is Mr. Flanigan?

A. My father-in-law.

Q. He is one of the firm of S. & J. M. Flanigan?

A. Yes, sir.

Q. Did he have an interest in this charter?

(Objected to; admitted; exception.)

A. Am I compelled to answer that?

By the COURT:

Q. Did Mr. Flanigan have a pecuniary interest contingent upon this enterprise?

A. Yes, sir.

JOHN A. SHERMAN.

Cross examination resumed by Mr. DONOHUE:

Q. You have read the log-book?
A. Yes, sir.
Q. Where the mark "Hoffman" is there, tell us what that means?
A. That means Mr. Hoffman's watch.
Q. And where the mark "Goetchius" is?
A. That means his watch.
Q. And where "Sherman" is marked?
A. That means my own watch.
Q. So far as the entries in your watch are concerned, with the exception of any corrections you made yesterday—or exceptions—are these entries correct?
(Objected to.)
Q. The entries made in your watch are entries made when you were there?
A. Yes, sir.
Q. With the exception of the statement in regard to the forty
177 tubes that had been repaired in the back connection, and some other things that you corrected here, are those entries that you made correct?
(Objected to.)
Q. Turn to the first day of your watch?
A. October 3d.
Q. All that page down to opposite Hoffman's name—all the entries above that on both sides of the page?
A. I made them myself down to Hoffman's watch, from 12 to 4.
Q. Were those entries made from your own knowledge?
A. They were.
Q. The entries following "Hoffman" 12 to 4, from what were they made?
A. From the slate.
Q. Then the name of Hoffman is at the bottom of his watch?
A. Yes, sir; opposite 4 o'clock; it is the same all through—the man's name is put at the end of his watch.
Q. The next watch was Goetchius', 4 to 8?
A. Yes, sir.
Q. From what did you make those entries?
A. From the slate.
Q. Of your own knowledge, do you recollect anything about that watch; do you know whether you knew at the time or not that the entry was correct?
A. Yes, sir.
Q. And in regard to Sherman's watch, 8 to 12, that is your watch?
A. Yes, sir.
Q. From what did you make those entries?
A. From my own personal observations.
Q. Can you tell what entries in your own watch are incorrect?
A. There is nothing except returning to Galveston November 1st; the entry is, "At 10 a. m. steam on main boiler again; tubes all tight but one; not having sufficient tools to repair them properly, and after consulting with the captain, we decided to run back to Galveston to
178 get tools and repair boiler; arrived at the wharf at Galveston at 4 p. m.; hauled fires and drew water from the boiler."
Q. Was that your watch?

A. Yes, sir; I wrote it after I got back to Galveston.
Q. Not from the slate?
A. No, sir.
Q. That is the watch you spoke of in the correction you made yesterday?
A. Yes, sir.
Q. I asked you yesterday in regard to that, whether you at that time thought it safe to come on?
A. Yes, sir.
Q. And I asked you why you went back?
A. The captain went back against my wishes; he took it upon himself.
Q. In regard to the other entries—is there any other correction that you want to make in regard to your watches?
A. Not in regard to my watches—no, sir.
Q. In regard to the others, is there any corrections you desire to make in regard to any of the items except in the column of remarks?
A. No, sir.
Q. In regard to the forty tubes you spoke of yesterday, in the entry of the 6th of November, that you took from the slate?
A. Yes, sir.
Q. Somebody else's memorandum on the slate?
A. Yes, sir; Mr. Hoffman's; he did the repairs to the boiler.
Q. Hoffman, as I understand you, was the first assistant engineer?
A. Yes, sir; and Goetchius the second assistant.
Q. How long have you been on vessels, either at sea or on the rivers?
A. About twenty-three years.
Q. In what capacity?
A. As engineer, fireman and oiler, and water-tender, and all grades.
Q. How long have you been engineer?
179 A. Eighteen years.
Q. You have been on vessels with tubular boilers?
A. Yes, sir.
Q. How is it as to the liability of these tubes to leak, or blow out, as they call it?
A. It very often occurs in tubular boilers.
Q. While on board this vessel under whose authority did you act?
(Objected to.)
Q. Did the captain of the vessel ever give you any order that you did not obey?
A. None whatever.
Q. You saw the boilers when you started from here in New York?
A. Yes, sir.
Q. What was its condition as to being seaworthy?
A. Good; I never saw a tighter one.
Q. What was its condition when you left Philadelphia?
A. It was in good order.
Q. Was it seaworthy?
A. Yes, sir.
Q. What was its condition when you left Galveston the first time?
A. In a good, seaworthy condition.
Q. What was its condition when you left Galveston the second time?
A. It was in good condition.
Q. What was its condition when you left Philadelphia to come here?
A. It was in good condition.
Q. When you say "good" you mean seaworthy?

A. Yes, sir; tight.

Q. Was there any difficulty from any stopped-up tubes at any time in obtaining steam to work the vessel?

A. No, sir; it steamed better coming home with the tubes stopped up.

Q. Coming home, from her trim, where did the water run that ran from the fire-room?

180 A. It ran aft.

Q. What threw the water, if there was any in the bilge, out of the ship?

A. We had pumps to work; we had pumps connected with the engine, and while the engine was at work these pumps were at work.

Q. At any time from the time you started from Galveston until you got back here, can you tell us any time when there was no water left in the bilges, as they were called?

A. No, sir; we kept them free.

Q. Under your boiler was there, or no, water?

A. There was very little; about an inch.

Q. From what?

A. It runs there; it came from the leakage from the ice, and ran that way, and then ran back.

Q. And that is what these bilge pumps threw out?

A. Yes, sir.

Mr. Donohue offers all the entries in the log of Mr. Sherman's own watch—remarks and all; also the entries without the remarks with other watches.

(Mr. Benedict objects to offering them, on the ground that they are already in; received subject to objection.)

Redirect by Mr. BENEDICT:

Q. When did you have a consultation with the captain in reference to going back to Galveston?

A. The morning we started back—November 1st.

Q. Was there any one present at the consultation between you and him?

A. Mr. Zane.

Q. At the second one?

A. He and I were alone.

Q. How long a time intervened between these two consultations?

A. Long enough to eat breakfast; half an hour, I suppose.

Q. Then the one was before breakfast, and the other immediately after?

181 A. Soon after.

Q. Do I understand that you did not make the entry on your log on that day until after you got back to Galveston?

A. I did not make it until after I got back.

Q. You say that that entry is not true?

A. It is not.

Q. You wrote a falsehood there?

A. Yes, sir.

Q. Did you have any conversation with Captain Denison, other than these two interviews that you have spoken of, about this matter that day?

A. We talked about it almost the entire day—something about it.

Q. Were you and he talking about it all day?

A. Whenever we met—several times during the day.

Q. What were you talking about?

A. About going back to Galveston.
Q. Did you tell Captain Denison on that morning that you wanted an expander?
(Objected to; admitted; exception.)
A. No, sir; I did not.
Q. You say there is one falsehood in the entry; is there only one falsehood in the entry?
A. So far as I know.
Q. That is with reference to having sufficient tools?
A. Yes, sir.
Q. That is the only falsehood?
A. So far as I know.
Q. Don't you know whether it is true or not?
A. That is all that is untrue.
Q. Only one falsehood in it?
A. Yes, sir.
Q. Then the tubes were all tight but one?
A. Yes, sir.
Q. Why did you not tighten that one?
A. We did try to.
Q. Why did you not do it; was it not because you could not?
182 A. No, sir; we had steam on, and the captain said he would go back to Galveston; that was the reason.
Q. You tried to tighten it before you had steam on?
A. I don't know, sir; Mr. Hoffman was in there.
Q. Don't you know whether you tried to tighten the tube before you had steam on; don't you know that you did not put steam on before you tried to get all these tubes tight?
A. Yes, sir.
Q. The entry there is, "Tubes all tight but one." You mean that before you put the steam on the tubes were all tight but one?
A. I did not know until after we got the steam on. I supposed they were all tight.
Q. What was the matter with that one?
A. It leaked around the tube sheet.
Q. It needed expanding, did it?
A. Or peening; either.
Q. What was the matter with the other twenty-five?
A. It was that the tube-sheet sprang away from the tubes.
Q. What do you mean by that?
A. Where the tubes cut through the tube-sheet the tube-sheet sprung away from the tubes.
Q. Was it the tubes that contracted or the tube-sheet that sprung away?
A. The tube sheet sprang out from the tubes so there was a space between the end of the tubes and the sheet on that side.
Q. Then it was not anything the matter with the tubes; it was the sheet?
A. The tubes were tight; it was between the tubes and the sheet where the leak occurred.
Q. If the tubes were tight, what made you write in the log that the tubes were leaking?
A. The first assistant put it down that way, and I left it so—tubes leaking. I did not think it was going to amount to anything.
183 Q. What makes you think that the first assistant put it down?
A. Because I saw him do it. I told him to do it.

Q. You told him to do it?
A. I told him to write down on the slate what was in there.
Q. Is there anything in this entry, on the 31st of October, that indicates that it was copied from the slate?
A. Yes, sir.
Q. What is it?
A. The discharging of the pilot, etc.
Q. There is not anything except the stopping to discharge the pilot; does that indicate that this was copied from the slate?
A. Yes, sir; that was copied from the slate.
Q. Anything else to indicate it?
A. In fact the whole thing was copied from the slate.
Q. Is there anything in the entry by which you can tell it was copied from the slate; is there any entry of any one else's name there?
A. No, sir; there is no one else's name.
Q. Is there anything in the entry that indicates that that entry was copied from the slate?
A. I know it was copied from the slate.
Q. Is there anything to indicate that it was copied from the slate?
A. No, sir.
Q. Did you ever make entries on the slate yourself?
A. Yes, sir.
Q. Do you recollect whether anything was done to this tube that you speak of as not being tight on the first of November—whether anything was done with the tube afterwards?
A. At Galveston; yes, sir.
Q. What was done with it?
A. There was a ferule put into it.
Q. Was it not expanded?
A. No, sir.
Q. It was not expanded?
184 A. No, sir; the expander would not fit it.
Q. You say the expander would not fit it?
A. Would not fit the ferule.
Q. How about the tube?
A. It would fit the tube, but it was not used on the tube.
Q. Do you recollect the expander getting broken?
A. Yes, sir.
Q. Was it broken while you were using it?
A. No, sir; Mr. Hoffman broke it; I saw it broken though.
Q. What was he doing with it?
A. He was expanding a tube or trying to.
Q. Do you recollect whereabouts in the boiler?
A. In one of the middle box of tubes.
Q. Was that one of those twenty-six that leaked?
A. No, sir.
Q. Not that one?
A. No, sir.
Q. Did you direct him to expand that one that he was expanding?
A. Yes, sir.
Q. Did he expand any other than that one?
A. He had expanded one before that; at least he said he had; I did not see it.
Q. What day was that that the expander was broken?
A. The first day we had it.
Q. How long was that before you started the second time?

A. This was on November 6 that he broke the expander; November 7 we were ready to go.

Q. You did not start until November 8?

A. Yes, sir; November 7; reported ready on the 6th and started on the 7th.

Q. What, if anything, were you doing on the 6th of November?

A. Hammering around the boiler and cleaning the engine around.

Q. What do you mean by hammering around the boiler?

A. We were making believe we were to work.

185 Q. Then you were not really at work?

A. No, sir; no necessary work.

Q. When did you get the expander, on the 5th or 6th?

A. It was on the 6th.

Q. Then it was on the 6th that Mr. Hoffman was expanding this tube?

A. Yes, sir.

Q. Was not that necessary?

A. No, sir.

Q. It was not necessary?

A. No, sir.

Q. Did you have the expander mended after it was broken?

A. I made a roller for it.

Q. You mended it?

A. No, sir; we did not.

Q. Did not mend it at all?

A. I put on a piece of iron; it was not mended; we could not use it; it was not mended.

Q. Do you swear you did not use it after it was broken?

A. Yes, sir.

Q. You say you got this expander on the 6th—how long after you got it was it broken?

A. I do not remember the time; it was broken the same day that we got it; a little while afterwards.

Q. Did you get it yourself from the shop?

A. Yes, sir.

Q. Now, sir, how long after that was it bróken; you saw it broken?

A. It was broken some time during the forenoon; I don't know what time I got to the ship with it.

Q. About how long after?

A. Maybe two hours, or maybe an hour.

Q. Were you there from the time that you brought it to the ship until the time it was broken?

A. Yes, sir; I was in the engine room.

Q. And you say Mr. Hoffman told you he had only expanded one tube?

A. But that one.

186 Q. And yet you wrote in the log that you had expanded forty?

A. I took it from the slate.

Q. And wrote it in the log?

A. Yes, sir.

Q. Do you mean to say now that you did not know it was false at that time?

(Objected to as incompetent; admitted; exception.)

A. I did not know it was false at the time I copied it; I knew it next morning.

Q. What reason had you, at that time, to believe it was true?

(Objected to as immaterial and irrelevant; question withdrawn.)

Q. What reason had you for believing that that entry in the log was incorrect?

(Objected to as immaterial and hearsay.)

The COURT. I think he has a right to ask him how he knows that forty tubes were not expanded.

Q. If you say that these forty tubes were not expanded, how do you know that they were not expanded?

A. By what Mr. Hoffman told me.

Q. Were you ever on a vessel with tubular boilers before, where twenty-six tubes leaked at once?

A. Yes, sir.

Q. What vessel was that?

A. The steamship North America.

Q. How large was her boiler compared with this one?

A. Nearly the same size; she had four.

Q. These twenty-six tubes that you spoke of, did they all give out in one boiler?

A. Forty eight tubes gave out in one boiler.

Q. Were you ever on any other vessel where as many as twenty-six gave out?

A. No, sir, not as many; I have had more stopped up, though; but never to give out at one time.

187 Q. Was there any possibility of any hot water getting under the refrigerator, except hot water that leaked from the boiler?

A. No, sir.

Q. The water that leaked from the boiler went down into the bilge of the ship?

A. Yes, sir.

Q. You say that the bilge-pumps worked with the engine?

A. Yes, sir.

Q. You mean by that that they worked if connected?

A. They were always connected; they worked all the while.

Q. Whether there was any water in the bilge or not?

A. Yes, sir.

Q. That is, they worked all the while the engine worked?

A. Yes, sir; you cannot disconnect them without stopping the engine.

Q. I see that you have entered sometimes in your log that the bilges were dry?

A. Yes, sir.

Q. Why did you make those entries?

A. We most generally do it in all ships.

Q. I wish you would look at those entries of yours; first trace through the entries on the voyage out, and say if there is any entry during that time about the bilges?

A. No, sir, there are no entries; she always had water in her.

Q. The bilge-pumps did not pump her out?

A. She had so much at the head that the water ran forwards instead of aft.

Q. That is on the voyage out?

A. Yes, sir.

Q. And you made no entry of the bilges, because the were not dry?

A. I made entry of starting the pumps; I never had the bilges dry forward on the way out.

Q. I wish you would find the entries where you started the pumps?

188 (Mr. Donohue objects.)

Q. Did you make an entry on the voyage home of starting the pumps?

A. I don't know that I did; I don't think we did.

Q. Did you make any entry with relation to the bilge being dry, on the voyage home?

A. Yes, sir.

Q. Will you find me on what days you made any entry with reference to the bilge being dry?

(Mr. Donohue objects, unless the log book is put in evidence.)

The COURT. It is already received subject to objection; in that point of view the witness may state what is there as well as what is not there.

A. Yes, sir.

Q. When is the first one?

A. November 8.

Q. What is the entry on that day?

A. "The ship has made no water this day."

Q. Any other entry?

A. November 9.

Q. What is that entry?

A. "Ship making no water."

Q. What next?

A. November 10, "Making no water."

Q. The next?

A. Nov. 11, "Making no water;" Nov. 12, "Ship's run free from water;" Nov. 13, "No water in ship's bilge;" Nov. 15 (after leaving Key West), "Bilges free from water;" Nov. 16, "No water in ship's bilge;" Nov. 17, "Bilges free from water;" Nov. 18, "No water in the bilge;" Nov. 19, "The bilges dry;" "Nov. 20, "No water in ship's bilge;" Nov. 21, "Bilges dry;" Nov. 22, "No water in bilges."

By the COURT:

Q. How do you ascertain that there is no water?

189 A. By going down to look.

Q. It does not depend on the pumps not throwing water?

A. They would throw water if there.

Q. What is the entry based upon—that the pumps do not throw any water, or that you go down and measure it with a stick?

A. That we go down and measure it with a stick. The pipe is about an inch from the bottom of the ship. As soon as the water gets below the water pipe, the pump sucks air. As soon as the water gets up to the pipe it pumps.

Q. Taking all these entries, there never was a time, from the 8th of November to the 22d of November, when the pump threw water?

A. It was pumping all the time.

Q. According to these entries, there was not any water pumped in fourteen days.

A. It means that it kept it out as fast as it came in. All ships have three or four inches of water. As fast as the water runs into the pumps the pumps throw it out.

Q. Do these entries each day mean that at some particular hour on each day you went down and measured?

A. Every watch would look, and I would go down twice a day—at 12 o'clock at night and 12 o'clock in the day—and look myself.

Q. Do those entries mean your own observations?

A. Yes, sir.

Q. It means, then, that twice on each day, the pumps working all the time, you went down and found these results?

A. Yes, sir; that is what I mean. If the pumps had been stopped I would know it by looking at the water.

Q. When did you go down?

A. I made it a rule to go down at 12 o'clock in the day and 12 o'clock in the night; and then I went down two or three times during the day, probably, besides.

Q. And measured the water in the bilge?

A. Yes, sir.

Q. And these entries are the result?

A. Yes, sir.

190 By Mr. BENEDICT:

Q. I understood you to say that when you write "bilge dry," you mean there is not water enough in there for the pumps to suck?

A. Yes, sir.

Q. You do not mean that there is no water there?

A. No.

Q. In this ship how much water does "bilges dry" mean?

A. About an inch; perfectly dry under the boiler; not a quarter of an inch there; about one inch where the pump was.

By Mr. DONOHUE:

Q. The pump-well is, when the ship is on an even keel, as low as anything can be?

A. We get it at the lowest part of the ship—the pump-well.

Q. The pumps used to throw the water out go down within an inch of the bottom of the pump-well?

A. Yes, sir.

Q. The pumps are working all the time the engine is working?

A. Yes, sir.

Q. And if the water rises above the mouth of that tube where the pump is fixed, it is drawn out and thrown overboard?

A. Yes, sir.

Q. You made the examination you have stated, and never found water to come up to the mouth of the pumps?

A. Never. I always found the pumps sucking air.

Q. Do you know what the ship had in the after part?

A. Some wet salt hides.

By the COURT:

Q. You have stated that the condition of the boiler was seaworthy when you left Galveston the first time?

A. Yes, sir.

191 Q. That is the 31st of October?

A. Yes, sir.

Q. That same day, at 7 o'clock, you found twenty-six tubes leaking?

A. Yes, sir; the sheet sprung.

Q. That being the fact, how can you say that the boiler was seaworthy when you left Galveston?

A. The boiler was perfectly tight when we left Galveston.

A. I did, sir; I gave him directions to telegraph to New Orleans to get one from there if possible, if it could be done quicker, and he did telegraph.

Cross-examination:

Q. You had hides in the after part of the ship?

A. Yes; green, salt hides, and dry hides.

Q. You delivered them in good order?

A. They came out in good order in Philadelphia.

Q. I understood you to say that when you had this talk with Mr. Sherman, that you determined that unless he would guarantee that no more tubes would blow out that you would go back?

A. Yes, sir.

(Pages 195, 196 missing.)

197 EXHIBIT A.

OFFICE OF HENRY DENISON & CO.,
NO. 411 WALNUT ST., PHILADELPHIA,
September 24, 1872.

Mr. RUDD:

DEAR SIR: The Wright came around all right, as doubtless Mr. Sherman informed you. Twenty-six hours from the time left pilot at Sandy Hook she was at the wharf at Cooper's Point.

The wonderful process or patent is being put on board rapidly, and I should be pleased to have you see your packet when she is ready for sea; her between decks needed caulking very much; could look up from lower hold and see daylight all along; have had it done, likewise the cock-pit aft; will not spend one dollar that can be avoided that has to come out of your pocket.

I gave Sandy H. pilot order on Woodhouse & R.; the bills kindly paid by you for coal, water, and pilotage at N. Y. will, upon presentation, be approved by me and promptly paid by D. & P. If she gets any passengers she will have to pass muster for that, and when inspector comes he may order another boat.

I will see the best possible care is taken of your ship, and if I return O. K. from Texas, her present charterers will doubtless want to purchase her, as I opine she, with several important alterations, will be just the packet we want.

With kind regard to Mr. Towner, and thanking you gents for the kindness and politeness extended when in your city, and hoping before sail to have pleasure of seeing you here, and will keep you posted,

I remain, truly and respectfully, yours,

H. DENISON.

Excuse penmanship. Blind; left my glasses at home this a. m.

198 EXHIBIT B.

STEAMER FRANCIS WRIGHT,
Galveston, October 21, 1872.

Mess. WOODHOUSE & RUDD:

GENTS: We reached here Thursday, Oct. 17th, 14 days from the wharf at Phil., 16 hours actual stoppages at sea to plug tubes. Heavy

weather after leaving Tortugas will account with stops for total, 48 hours. She made the run in 12 days, which I consider pretty fair, considering her large draught, &c. Have reported full particulars to Mess. D. & P.

Mr. Sherman doubtless has addressed you; he is an excellent gent. and doing all in his power for both owners and charterers. Some damage to cargo in lower hold, which I feared, as should have sheathed and stuffed the bottom of the ice-house as well as top and sides. Know more next time; nothing serious.

We are to-day getting the machine to work right before contracting for and commencing to slaughter beeves.

Hope to bring cargo home O. K. and make passage in 9 or 10 days; and Sherman thinks she will. She was entirely too deep coming out. I think we have on board now, between decks, at least 250 tons ice—about 260 when started. All right in that respect; and if machine works all right expect and hope to show the world what "I know about refrigerators."

Enclosed I send you, as promised, Mr. Towner, 2d mate and steward's memorandum of inventory in their departments found aboard.

I am striving to do my best for all parties, and making expenses low as possible; several things necessary for D., authorized by you to obtain for the ship, I have had to procure.

199 We shall use all possible dispatch; but I intend to be good ready before sail, as all, in my judgment, depends upon this trip, and I intend to guard every possible point.

Trust to have the pleasure of seeing you in Phil. on my return, and to have the pleasure of sending you, upon arrival, a fine quarter of beef.

With kind regards to your Mr. Towner and Mr. Sherman; received letter from your Mr. Woodhouse yesterday, and we hope yet to see him before leave.

Truly and resp'y, your ob't serv't,

H. DENISON,
Com'd'g S. S. F. Wright.

EXHIBIT C.

By authority of the United States of America.

CERTIFICATE OF INSPECTION, No. 220.

Steamship Francis Wright; certificate expires October 2d, 1873.

STATE OF PENNSYLVANIA,
District of Philadelphia, ss:

Application having been made in writing to the undersigned, inspectors for this district, to inspect the steamship Francis Wright, of New York, in the State of New York, whereof H. E. Woodhouse and others, owners, and Henry Denison is master, and having thoroughly performed that service as required by law, now on this second day of October, 1872, do certify that the said vessel was built at Fair Haven, in the State of Connecticut, in the year 1865. The hull, constructed of wood, is of 627 41-100 tons burthen; has no water-tight cross bulkheads therein as required by law; and has 2 permanent stairways, and other sufficient means of escape from the main deck to the upper deck. That the said vessel is brig-rigged and equipped with two masts, with spars, sails and

200 rigging for the same; is supplied with suitable anchors and chains, floating anchor or drag of sufficient dimensions, with proper at-

tachments thereto, and has pumps or other appliances of sufficient capacity to free the vessel of water in case of heavy leakage. That the said vessel is provided with 10 state-rooms and an aggregate number of berths, permanent or movable, to accommodate 20 first-cabin passengers, and has berths and suitable accommodations for no second-cabin passengers, and for no deck or steerage passengers, and is, therefore, permitted to carry, of the several classes of passengers named, a number not exceeding that specified below and as there certified, when the cabin and measured deck spaces, enumerated and set apart for passengers, are entirely clear of freight or stores. And the aggregate number of persons necessary, in our opinion, to constitute a full compliment of officers and crew, sufficient at all times to navigate and manage the vessel with safety, including the proper number of watchmen, should not be less than that specified below and as there certified, whose names and offices on board, respectively, and the post of duty assigned to each, in case of fire or other disaster, must appear in the vessel's station-bills, to be prepared and kept conspicuously posted on board while under way.

Passengers permitted to be carried.		Complement of officers and crew required.	
First cabin	20	Master's department	8
Second cabin		Engineer's department	10
Steerage		Steward's department	3
Deck		Watchmen	2
Total	20	Total	23

We do further certify that the said vessel is propelled in part by steam, and is provided with one low-pressure boiler, 16 feet in length, and 162 inches diameter of shell, constructed of iron plates 5-16 of an inch in thickness (said boiler being of ret. tube form, and having 3 main flues 46 x 19 in diameter; made of iron 5 16 in thickness, and 144 201 return tubes, 3 inches in diameter). Unstamped. (These figures or marks indicating strength, being the lowest visible upon any of the plates in the cylindrical parts of the boiler.) And said boiler was built by Secor & Co., of Jersey City, N. J., in the year 1870. That the said boiler is provided with approved means for blowing out, so as to thoroughly remove the mud and sediment from all parts of the boiler while under a pressure of steam. That the longitudinal laps of the cylindrical parts of the said boiler are not double riveted, and the rivet-holes for the said boiler have not been fairly drilled, instead of punched. And the steam pipes, stand pipes, water and steam connections, and all things pertaining thereto, are in strict conformity with the provisions of law in respect to the same. That we have subjected the said boiler to a hydrostatic test pressure of 47 pounds to the square inch, and the maximum working pressure allowed is 35 pounds to the square inch, determined by the rule prescribed by law. That there are 2 safety valves, with each area of 47 square inches, that the load prescribed is such as to allow but 35 pounds pressure to the square inch left in charge of the engineer; and one lock up safety valve of 2 inches diameter loaded to 37 pounds pressure, and is taken wholly from the control of all persons engaged in navigating the vessel and is secured. There are 2 supply pipes of 2 1-2 inches in diameter, and ample means to keep the water in the boiler up at all times to four inches above the top of the flues; and one steam pipe, 8 inches diameter, made of copper 1-8 of an inch in thickness. That the said vessel is also provided with two condensing engines of 30 inches in diameter of cylinder and 2-feet stroke. Has 2 feed pumps

of 5 inches in diameter and 7 inches stroke, worked by the main engine. Has one independent steam-feed pump of 7 inches diameter and 7 inches stroke. Has suitable arrangements for delivering the feed water into the boiler at a temperature not less than 100 degrees Fahrenheit; 8 gauge-cocks in the front end of the boiler, and 1 low-water gauge. Has
202 no low-water alarm indicator, approved pattern, and 1 registering steam gauge (Edson), approved pattern, that will correctly record each excess of steam carried above the prescribed limit and the highest point attained, taken wholly from the control of all persons engaged in navigating the vessel, and secured. That the said vessel is required to have and is provided with fire apparatus for extinguishing fire on board, viz: Has 3 good and efficient fire extinguishers of approved (National) pattern, kept in engine room and saloon. Has suitable pipes and valves attached to the boiler to convey steam into the different compartments of the hold not occupied by the passengers or crew. Has 3 good double-acting fire pumps of sufficient capacity and arrangement for efficient and immediate service, with bilge connections for discharging water overboard from the hold, furnished with 350 feet of good hose, well-fitted with couplings and nozzles complete. The principal fire pump, worked by steam (consisting of steam donkey pump), has suitable pipes leading therefrom and fitted and supplied as required by law. And all of the pumps provided for freeing the vessel of water from the hold, other than the fire pumps above specified, are fitted with connections and nozzles, so as to be used for fire purposes. Has a total of 350 feet of hose; has 30 fire buckets, 5 water tanks, no water barrels, and 6 axes. That, in addition to the fire pumps above specified, the said vessel is provided with 2 bilge injections, other pumps for freeing the vessel of water according to law. That the said vessel is also required to have, and is provided with, life-saving apparatus in accordance with the law, viz: Has 3 life boats (1 of metal and 2 of wood), no life rafts, no auxiliary life-saving appliances; and has 43 life preservers, adjustable to the body, each containing 6 pounds of good cork and having a buoyancy of at least 24 pounds. That the said vessel is also provided with sufficient and reliable steering apparatus; has suitable arrangements for signaling the engineer from the pilot-house; and has reliable compasses and steam whistle complete, and is properly supplied with signal lights. And, as a further condition of our approval of this vessel, her mean draught of water shall in no case exceed 10 feet.

203 And we further certify, finally, that the said vessel throughout, including the equipments in all things specified and not specified herein, to best secure the safety of all persons on board, is staunch, seaworthy, and in good condition, and in strict conformity with the provisions of law; and that we declare it to be our deliberate convictions, founded upon the inspection we have made, that the said steamer may be employed as such, upon the waters herein specified, without peril to life from imperfection of form, materials, workmanship, or arrangement of the several parts, or from age or use; and that the said vessel, complying with the conditions above specified, is permitted for one year to navigate the waters of Atlantic coast, and within the following limits, to wit: From to , touching at intermediate points, a distance direct of about miles and return.

(Signed) JOSEPH MERSHON,
Inspector of Hulls.
JOSEPH L. PARRY,
Inspector of Boilers.

STATE OF PENN., *ss:*

Personally appeared before me, the undersigned, Joseph Mershon and Joseph L. Parry, duly appointed inspectors of steam vessels for the district of Philadelphia, and made solemn oath that the annexed certificate of inspection is just and true in all things as therein stated.

Sworn and subscribed before me this 3d day of October, A. D. 1872.

(Signed) ALEX. A. ENTZ,
Act'g D. C.

CUSTOM HOUSE, PHIL'A,
Collector's Office, 3d Oct., 1872.

I hereby certify that the above is a true copy of the original on file in this office.

[L. S.] D. F. HOUSTON,
D'y Collector.

204 The above form of inspection certificate is in accordance with the regulations prescribed by the board of supervising inspectors.

JOSEPH BELKNAP,
Supervising Inspector General.

ASAPH S. BEMIS,
Secretary of the Board.

Form approved:

GEO. S. BOUTWELL,
Secretary of the Treasury.

EXHIBIT D.

PHIL., *Sep.* 28, '72.

Messrs. WOODHOUSE & RUDD:

GENTS: In reply to your esteemed favor rec'd this a. m. would say: On Tuesday the Wright will be ready to have the inspectors come aboard, and upon Mr. Sherman's return will call upon them and appoint the hour they will be ready, and immediately notify you, as requested, by telegraph.

We go early on Monday to Richmond to coal and expect to get her to her berth, foot of Pine st., front of Duncan & Poey's office, by 3 or 4 p. m., when we propose to have her inspected.

The drag and boat I will see on board and don't anticipate any delay, as she will, I think, be in perfect order in all her departments.

Trusting to have pleasure of seeing you and will telegraph Monday.

Tried to find inspectors to-day, but could not; but they promised Mr. Sherman to be on hand any day and any hour he would appoint with small notice.

Truly and res'y yours,

H. DENISON.

205 EXHIBIT E.

OFFICE OF HENRY DENISON & CO.,
No. 411 WALNUT ST.,
Philadelphia, Sep. 26th, 1872.

Messrs. WOODHOUSE & RUDD:

GENTS: Yours, enclosing Am. and French classification S. S. Francis Wright, also inspector's certificate expired Sep. 14th, and your three

several favors are duly rec'd this a. m., and in reply would say expect to be ready for sea on Tuesday or Wednesday of next week; cannot buy a drag or Ingersoll or Francis' life-boat in this city; have made thorough inquiry to-day. The ship will be ready to inspect on Monday, and Mr. Sherman will, as requested, have everything in his department in complete order; if you wish to be present and will telegraph at what hour on Monday you can be here, we will arrange with our inspectors to come on board at that time. We do not think there will be any difficulty in passing the ship for passengers by our Phil. inspectors as she is. Mr. Duncan is well acquainted with our hull inspector and I have posted him.

We expect to coal on Saturday; work has progressed rapidly on board since our arrival here.

The papers received to-day shall be taken good care of; and trusting to have the pleasure of seeing you in our city on Monday,

I remain, gents, truly and resp'y yours,

HENRY DENISON,
Com'd'g S. S. F. Wright.

If drag is purchased in N. Y., should be the Ingersoll drag of 50 superficial feet; doubt if there is such a drag on any S. S. out of the port.

Wrote your Mr. Rudd on Tuesday.

H. D.

206 EXHIBIT G.

PHILADELPHIA, *Sept. 17th*, 1872.

Mess. WOODHOUSE & RUDD, *New York:*

GENTLEMEN: Please deliver to Capt. Dennison the steamship Francis Wright, under charter to us, as per charter party duly received this day.

Very truly yours,

DUNCAN & POEY.

EXHIBIT H.

PHILADELPHIA, *15th Oct.*, 1872.

Mess. WOODHOUSE & RUDD, *New York:*

DEAR SIRS: We are in receipt of your esteemed favor of 14th inst., the contents of which have our attention.

As the disbursements made by us for ac. of the Francis Wright have been paid, together with our bills of expenses on same, we prefer waiting until Capt. Dennison returns to render you statement of same. You can therefore draw on us, on the 18th, for the full am't of 1st month's charter of the steamer, leaving the disbursement ac. pending until settlement of the 2d month.

Hoping this will meet your approval, we are, dear sirs,

Yours, very truly,

DUNCAN & POEY.

207 EXHIBIT I.

PHILADELPHIA, *Sept. 26th*, 1872.

Messrs. WOODHOUSE & RUDD, *New York:*

DEAR SIRS: Your valued favor of yesterday rec'd, and in reply we would say that we confidently expect the Francis Wright to be ready

to sail from here on Wednesday next at noon. From present appearances she will be ready to receive freight Monday morning.

We shall be much pleased if one of your firm can take a run over here to see the improvements, which we flatter ourselves we have made to the ship, on Monday or Tuesday.

Yours truly,

DUNCAN & POEY.

EXHIBIT J.

NEW YORK, *Sept.* 25, 1872.

Capt. HENRY DENISON,

D'R SIR: Please advise us by return of mail when you will be ready for sea, and for what you can buy in Phila. a drag and metallic L. boat 16 ft. long, new and 2d hand.

If you require a passenger certificate, you must arrange through Mr. Flanagan and others to bring the influence necessary to have the stern matter passed over. This must be well managed, and you will please advise us if you think it can be done, and give date when you will be ready to call inspection, in order that we may be there.

Y'rs truly,

WOODHOUSE & RUDD,
P. p. WM. A. TOWNER.

208 EXHIBIT K.

NEW YORK, *Sept.* 25, 1872.

Capt. DENISON:

D'R SIR: In ours of to-day perhaps we were not explicit enough, and beg to advise now for y'r gov't that we shall pay no attention whatever to N. Y. inspectors, but call hull and machinery examination in Phila., having certificate dated there.

Please ask Mr. Sherman to have everything in shape and looking well.

Yours truly,

WOODHOUSE & RUDD,
P. p. WM. A. TOWNER.

EXHIBIT L.

NEW YORK, *Sept.* 28, 1872.

Capt. HENRY DENISON,

D'R SIR: We have sent forward to-day, consigned to Duncan & Poey, by Clyde's line, a 22 ft. metal'ic L. boat, which please have painted and repaired, charging us the expense and also cost of oars. Such boats are scarce here, old or new, and we had to do the best we could. The drag and life preservers will be forwarded on Monday. Mr. Sherman called to see us this a. m., and his report that inspection would probably be arranged for Wednesday explains doubtless our being without any telegraph from you.

Yours truly,

WOODHOUSE & RUDD,
P. p. WM. A. TOWNER.

209 U. S. district court.

J. M. DUNCAN ET AL.
vs.
THE STEAMER FRANCIS WRIGHT.

On the pleadings and proceedings in this cause, and the affidavits hereto annexed, let the claimants herein show cause before this court on the 27th day of January, 1874, at 11 a. m., or as soon thereafter as counsel can be heard, why this cause should not be reheard on further testimony, or why the libellants should not have such other or further order or relief as to the court shall seem just, and in the meantime let taxation of costs and entry of the decree be stayed.

Dated January 23d, 1874.

SAM'L BLATCHFORD.

The above motion is hereby adjourned to February 3d, at 11 a. m.; stay to continue.

January 27, 1874.

THOS. E. STILLMAN.

BUTLER, STILLMAN & HUBBARD.

210 U. S. district court.

J. M. DUNCAN ET AL.
vs.
THE STEAMER FRANCIS WRIGHT.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

R. D. Benedict, one of the libellants' proctors, being duly sworn, says that the point on which the decision of this case turned was one which had never presented itself to his mind, and that if deponent had thought of it he could have supplied evidence which would have utterly changed the aspect of the case on that point; that if the case is again opened, and the libellants are allowed to supply further evidence, deponent fully believes that he will be able to show conclusively that the loss of the beef in question was not in any way attributable to the fact that only twenty tons of ice was purchased at Key West, but arose from causes solely connected with the giving out of the boiler of the steamer, by reason of its unseaworthy condition.

R. D. BENEDICT.

Sworn to before me this 22d day of Jan., 1872.

SAM'L H. VALENTINE,
Notary Public, N. Y. Co.

211 U. S. district court.

J. M. DUNCAN ET AL.
vs.
THE STEAMER FRANCIS WRIGHT.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Simon Poey one of the libellants, being duly sworn, says that the question of fact upon which the decision of Judge Blatchford in this case has been placed was not fully inquired into on the trial of the

cause, and that it appears to him that the said decision arises from a misunderstanding of facts on the part of the judge, occasioned by the omission of material evidence.

That deponent could have shown, and can show, if allowed the opportunity, that the destruction of the beef in question was in no way attributable to the absence of ice on board of the vessel, or to the fact that more ice was not bought at Key West; that the air in the room in which the beef was placed was cooled by passing through an ice box of a size sufficient to contain about four tons of ice, which was kept constantly filled; that besides this ice box, there was an ice store room, and that at the time when the beef spoiled, the ice box was full, as it had been kept all the time, and there was also about seven tons of ice left in the store room, and that that amount, owing to the cooler temperature which the vessel met as she came north, would have been sufficient for the ordinary consumption of the refrigerating apparatus until the vessel reached Philadelphia.

212 That annexed hereto is a diagram showing the position of the refrigerating apparatus in the Francis Wright, which diagram shows the same accurately.

And deponent further says that the amount of ice on board the vessel when she left Key West was the same as that on board the Firefly on her previous voyage, when she left Key West with a similar cargo, and that she then brought her cargo to Philadelphia in perfect order.

SIMON POEY.

Sworn to before me this 22d day of Jan., 1874.

LOUIS C. LEWIS,
Notary Public, N. Y. Co.

213 U. S. district court.

DUNCAN & POEY
vs.
THE ST'R FRANCIS WRIGHT, ETC.

We consent that James P. Ledwith be substituted as proctor in this cause in our place and stead.

Dated Feb'y 18, 1874.

BEEBE & DONOHUE,
Proctors for Resp'ts.

U. S. district court.

DUNCAN ET AL.
vs.
THE STEAMER FRANCIS WRIGHT.

I consent that Messrs. Butler, Stillman & Hubbard be substituted as proctors for the claimants in the above entitled cause in my place and stead.

Dated February 18, 1874.

JAMES P. LEDWITH,
Proctor for Cl'm't.

214 At a special term of the district court of the United States for the southern district of New York, held at the court rooms in the city of New York, on the 19th day of February, 1874.

Present the honorable Samuel Blatchford, judge.

J. M. DUNCAN ET AL.
vs.
THE STEAMER FRANCIS WRIGHT, HER TACKLE, etc.

On reading and filing the annexed consent of Beebe & Donohue, proctors for the claimants,

It is ordered that James P. Ledwith be, and he is hereby, substituted as proctor for the claimant herein, in the place and stead of said Beebe & Donohue, and on filing the consent of James P. Ledwith, proctor for the claimants herein.

It is ordered that Butler, Stillman & Hubbard be, and they are hereby, substituted as proctors for the claimants herein, in the place and stead of said James P. Ledwith.

SAM'L BLATCHFORD.

215 At a stated term of the district court of the United States of America, for the southern district of New York, held at the United States court rooms, in the city of New York, on Friday, the 20th day of February, in the year of our Lord one thousand eight hundred and seventy-four.

Present, the honorable Samuel Blatchford, district judge.

J. M. DUNCAN AND SIMON POEY
vs.
THE STEAMER FRANCIS WRIGHT, HER TACKLE, etc. } 24419.

This case having been heard on a motion on the part of the libellants for a rehearing on further testimony, and in opposition thereto on the part of the claimants, and argued and submitted by the advocates for the respective parties, and due deliberation being had in the premises,

It is now ordered, adjudged and decreed by the court that said motion for a rehearing of said above-entitled cause on further testimony on the part of the libellants be, and the same hereby is, denied.

SAMUEL BLATCHFORD.

216 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court rooms in the city of New York, on Friday, the twentieth day of February, in the year of our Lord one thousand eight hundred and seventy-four.

Present, the honorable Samuel Blatchford, district judge.

JACOB M. DUNCAN AND SIMON POEY
vs.
THE STEAMER FRANCIS WRIGHT, HER TACKLE, etc. Woodhouse & Rudd, Cl'ts.

A motion on the part of the libellants for a rehearing on further testimony having been heretofore denied by the court, and this case having

been heard on the pleadings and proofs, and argued and submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the premises,

It is now ordered, adjudged and decreed by the court that the libel filed in this action be and the same hereby is dismissed, with costs to be taxed against the libellants; and the costs of the claimants having been taxed at the sum of three hundred and forty-five 26-100 dollars,

It is further ordered, adjudged and decreed that the claimants recover in this action against the libellants the sum of three hundred and forty-five 26-100 dollars, being the amount of such taxed costs.

217 And it is further ordered that unless an appeal be taken from this decree within the time limited and prescribed by the rules and practice of this court, the stipulators for libellants' costs forthwith pay into the registry of the court the amount of their stipulation, and that upon such payment thereof the clerk distribute the proceeds in satisfaction of the taxed costs.

SAM'L BLATCHFORD.

218 U. S. district court.

JACOB M. DUNCAN AND SIMON POEY, libellants and appellants,
vs.
STEAMSHIP FRANCIS WRIGHT, HER ENGINE, etc. Humphrey E. Woodhouse and Joseph Rudd, jr., claimants and appellees.

GENT'N: Please take notice that the libellants hereby appeal from the final decree in this case to the next circuit court.

March 2, '74.

Yours, etc.,

BENEDICT, TAFT & BENEDICT,
Lib'Vts' Proct's.

TO BUTLER, STILLMAN & HUBBARD, Esq.,
Clm'ts' Proct's.

GEORGE F. BETTS, Esq., *Clerk, etc.*

219 Know all men by these presents, that we, Harvey P. Farrington, of Croton, Westchester County, New York, are held and firmly bound unto Humphrey E. Woodhouse and Joseph Rudd, jr., in the sum of nine hundred and fifty dollars, to be paid to the said Woodhouse & Rudd, their executors, administrators or assigns, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents. Sealed with our seals, and dated the twenty-seventh day of February, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas Jacob M. Duncan and Simon Poey, as appellants in error, have prosecuted a writ of error issuing out of the circuit court of the United States, for the southern district of New York, in the second circuit, to reverse the judgment of the district court of the United States, for the said southern district, bearing date the 20th day of February, 1874, in a suit in which Jacob M. Duncan and Simon Poey are libellants against the steamer Francis Wright, her engine, etc.:

Now, therefore, the condition of this obligation is such, that if the above-named appellants, Jacob M. Duncan and Simon Poey, shall pros-

ecute said appeal with effect, and pay all costs which shall be awarded against them as such appellants therein, if they shall fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

H. P. FARRINGTON. [SEAL.]

Sealed and delivered and taken and acknowledged this 29th day of Feb'y, A. D. 1874, before me.

WM. D. JONES,
Notary Public for Kings Co.

220 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Henry P. Farrington, being duly sworn, deposes and says that he resides in the southern district of New York, that he is worth the sum of two thousand dollars over and above all his just debts and liabilities.

H. P. FARRINGTON.

Sworn to this 29th day of Feb., A. D. 1874, before me.

WM. D. JONES,
Notary Public for Kings Co.

This bond approved as to form and amount and sufficiency of surety. Dated New York, February 29, 1874.

BUTLER, STILLMAN & HUBBARD,
Proctors for Claimants.

221 U. S. circuit court, southern district of New York.

JACOB M. DUNCAN AND SIMON POEY, LIBELLANTS AND APPELLANTS,
against
THE STEAMSHIP FRANCIS WRIGHT, HER ENGINE, etc. Humphrey E. Woodhouse and Joseph Rudd, jr., claimants and appellees, and Humphrey E. Woodhouse and Joseph Rudd, jr., respondents and appellees.

To the honorable the circuit court of the United States for the southern district of New York in the second circuit:

The appeal of the above-named libellants and appellants respectfully shows:

That, on or about the 21st day of December, 1872, the libellants, Jacob M. Duncan and Simon Poey, exhibited their libel in the district court of the United States for the southern district of New York against the above-named steamship Francis Wright and the above respondents, Humphrey E. Woodhouse and Joseph Rudd, jr., claiming over fifty dollars, praying, among other things, that said vessel be condemned and sold to pay the libellants' claim, with costs, and that this honorable court would make a decree against said Woodhouse and Rudd in favor of the libellants for the amount of their claim and costs.

222 That process was duly issued out of said court, and said vessel was seized, and said claimants and respondents thereafter duly appeared and gave bonds, and said vessel was discharged from the custody of the marshal.

That, on or about the 8th day of January, 1873, the claimants duly

filed their answer to said libel, praying that the same might be dismissed, with costs, as by reference thereto will more fully appear.

That said cause came on to be heard before the honorable Samuel Blatchford, judge of the said district court, on or about the 28th, 29th, 30th, and 31st days of January, and the 5th, 6th, 10th, and 11th days of March, 1873, upon the depositions and proofs introduced by the respective parties, and the said judge, having advised thereon, on or about the 10th day of January, 1874, made a decree in said cause whereby it was ordered, adjudged, and decreed that the libel of the libellants herein be dismissed, with costs.

And these appellants are advised and insist that the said decree is erroneous, inasmuch as the libellants were entitled to recover the damages by them sustained, by reason of the matters and things alleged in the said libel.

And these appellants, for these and other reasons, appeal from the whole of said decree to the next circuit court, to be held in said district, and on said appeal they intend to have said cause heard anew in the circuit court on the pleadings and proofs in the district court, and other and further proofs to be introduced by them in the said circuit court.

And they pray that the record and proceedings may be returned to the said circuit court, and that the said decree may be reversed, and a decree made adjudging that the libellants and appellants recover the damages by them sustained by reason of the things in the libel mentioned, with costs, or such other decree made as to the said court shall seem just.

BENEDICT, TAFT & BENEDICT,
App'l'ts' Proctors.
E. C. BENEDICT, *Advocate.*

223 U. S. district court.

JACOB M. DUNCAN AND SIMON POEY *ag't* THE STEAMSHIP FRANCIS WRIGHT, HER tackle, &c.

BLATCHFORD, J.:

On the 13th of September, 1872, the libellants entered into a written charter party with Woodhouse & Rudd, owners of the steamer Francis Wright, then at New York, whereby Woodhouse & Rudd charter the steamer to libellants, "for the term of six months, to run between Philadelphia or New York and Galveston, or any intermediate safe port in the United States, or any foreign port not prohibited by the insurance," with the agreement that the libellants are to have the privilege of cancelling the charter at the expiration of three months, or giving Woodhouse & Rudd fifteen days' notice and the payment of $1,500 bonus. The instrument then sets forth the following agreements by Woodhouse & Rudd: (1) That "the said vessel, in and during the said voyage, shall be kept tight, staunch, will fitted, tackled, and provided with every requisite for such a voyage." (2.) That "the whole of the said vessel (with the exception of the necessary room for the sails, cables) shall be at the sole use and disposal of "the libellants" "during the voyage aforesaid." (3.) That Woodhouse & Rudd will "take and receive on board the said vessel, during the aforesaid voyage, all such lawful goods and merchandise as" the libellants "may think proper to ship." The instrument then sets forth the following agreements by the libellants:

(1.) "To man, coal, and victual steamer, and pay all expenses of
224 every nature (including port charges, etc.) connected with running of the steamer, except insurance on vessel and repairs." (2.) To pay to Woodhouse & Rudd for the charter of the vessel "eighty-five dollars per day, United States currency, due daily, but payable at the expiration of each and every month in New York; vessel to be returned to the owners at the expiration of this charter in the same order and condition as she is now in, less the ordinary wear, and charterers to take and deliver the steamer at New York." Then follows these provisions: Owners to nominate and charterers to appoint chief engineer, to be paid by charterers at rate of one hundred and twenty-five dollars per month. Charterers to appoint captain subject to the approval of the owners. It is also agreed that this charter shall commence at New York on the 18th of September, 1872. If, from any derangement of machinery, steamer is delayed, the time lost is not to be paid for by charterers, and in such derangement (if any) owners to have privilege of cancelling charter. In case of any wreckage, towage, or salvage accruing to the vessel whilst under this charter one-half of said earning to be paid to the owners of the steamer.

In accordance with the terms of the charter party, John A. Sherman was appointed chief engineer of the vessel, and Henry Denison was appointed her captain. She was taken to Philadelphia, and there the libellants fitted her with a refrigerating apparatus to bring a cargo of fresh beef from Galveston, Texas, to Philadelphia. They put on board of her a general cargo of merchandise and proper fuel, and about 260 tons of ice, the latter to be used in connection with the refrigerating apparatus to preserve the fresh beef on the homeward voyage. She left Philadelphia for Galveston on the 3d of October, 1872, and arrived at Galveston on the 17th of the same month.

The libel alleges that during the voyage from Philadelphia to Galveston the vessel gave evidence of unseaworthiness by having a number of her boiler tubes blown out, and by great and unusual leaking in her boiler tubes, which rendered it difficult to make steam on the
225 vessel by reason of the water from the blown-out and leaking tubes escaping into the furnaces and affecting and diminishing the fires therein; by reason whereof the steamer was unable to attain her usual and proper speed, and was 14 days in making the passage from Philadelphia to Galveston, instead of 10 days, which is the full, usual, and ordinary time for a steamer of that capacity to make such voyage; that, when the vessel arrived at Galveston, Woodhouse & Rudd, through their agent and representative, the chief engineer of the vessel, were requested to make the proper and necessary repairs to the boiler and to its tubes, in order that there might be no further delays after the cargo of fresh beef was laden on board, and that the vessel might make the return passage in ten days; that the chief engineer promised that all necessary and proper repairs to the boiler and its tubes should be made, but they were not made, by reason whereof the steamer having on board about seventy tons of fresh beef was, on the 31st of October, 1872, being then four hours at sea out of Galveston on her voyage to Philadelphia, compelled to put back to Galveston for repairs, by reason of the tubes of the boiler again blowing out and leaking badly, and was detained at Galveston seven days thereafter in repairing some of the tubes; that the steamer again left Galveston for Philadelphia on the 7th of November, 1872, and was 15 days making the voyage, owing to the unseaworthy condition of the steamer, some of the tubes blowing out, and others of them leaking so badly that the boiler could with difficulty make steam,

and thereby the speed of the vessel was greatly reduced below what her ordinary speed would have been if her boiler-tubes had been kept in a proper and seaworthy condition; that, by reason of the detention of the steamer at Galveston while making repairs, and by reason of the detention of the steamer in making her passage from Galveston to Philadelphia, owing to the unseaworthy condition of the boiler-tubes, and by reason of the hot water which escaped from the boiler-tubes and was negligently allowed to run into the bilge of the steamer and melt the ice in the refrigerators where the fresh beef was stowed, the
226 beef became damaged, spoiled, and entirely lost to the libellants; that Woodhouse & Rudd did not perform their covenant; that the vessel in and during said voyage should be kept by them tight, staunch, well fitted, tackled, and provided with every requisite for such a voyage; that the value of the fresh beef at Philadelphia was $23,000; that by reason of the failure of Woodhouse & Rudd and the vessel to comply with said covenant, the fresh beef has been wholly lost to the libellants; and that, at the time of the making of the charter party, Woodhouse & Rudd knew that the steamer was chartered by the libellants for the purpose of carrying fresh beef from Galveston to Philadelphia, and also knew that the steamer was in an unseaworthy condition as regards her boiler and its tubes. The libel claims $30,000 damages against the vessel and her owners.

The answer of Woodhouse & Rudd, as claimant, sets up that the libellants had the entire charge and possession of the vessel, and denies that the chief engineer was the agent or representative of the claimants, and avers that the repairs which the claimants were bound to make were made, and that the steamer was, so far as the claimants were bound to do so, kept as called for by the charter party, and denies all the allegations of the libel in which the libellants claim a recovery.

It may not be difficult to hold that under the charter party the claimants were bound to keep the boiler and its tubes in proper condition during the voyage, through the master and the chief engineer as their agents; that the claimants remained in the possession of the vessel for such purpose through those officers as their agents for such purpose; that the boiler and its tubes were not kept in a proper condition, and that from that cause the voyage was delayed and prolonged.

By the charter party the claimants agreed to keep the vessel, while on a voyage named in the charter party, well fitted and provided with every requisite for such a voyage; and it is agreed that the libellants shall not pay any expenses of repairs. To enable the claimants
227 to discharge such duty it is provided that they shall have the nomination of the person who is to be chief engineer, and that no appointment of a captain shall be made otherwise than subject to their approval. The chief engineer was nominated by them and the captain was appointed with their approval. The claimants assumed absolutely the obligation referred to. They either deprived themselves voluntarily of all means of fulfilling it by not having any agent on board to attend to its fulfilment, or the officers referred to must be regarded in the interest of the claimants, through their mode of appointment, for the purpose of seeing to the fulfilment of such obligations.

The claimants contend that the libellants were in the exclusive possession of the vessel. But the provisions that the vessel shall be at the sole use and disposal of the libellants, and that the libellants shall man, coal and victual her and pay her running expenses (except insurance and repairs) and return her at the expiration of the charter in proper condition less ordinary wear, and take and deliver her at New

York, and pay one-half of her salvage earnings to the claimants, are not at all inconsistent with a fulfilment by the claimants of the agreed duty of keeping the vessel well fitted and provided with every requisite for the voyage, or with such possession by the claimants, through the captain and chief engineer appointed in the manner prescribed as would enable the claimants, through those officers to represent them in that regard, to see that the agreement was performed.

That the boiler and its tubes were not kept in proper condition during the voyage is established by the evidence. The boiler was not seaworthy. Whatever its apparent condition was when the vessel left Galveston the first time, with her cargo of beef on board, subsequent events and the result show that the boiler was unseaworthy. There was no cause to produce the blowing out and leaking of the tubes but the inherent defects of the boiler. Having left Galveston on the 31st of October, at 11 o'clock a. m., the vessel was stopped at 7 p. m. because 26 out of the 144 tubes in her boiler were leaking. She lay until 10
228 a. m., on the 1st of November, making repairs, and then returned to Galveston, and remained there making further repairs till 7 a. m., on the 7th of November, thus losing full 7 days of time. The return to Galveston was necessary in order to obtain a proper tool with which to make the repairs. On the voyage from Philadelphia to Galveston the vessel was stopped at sea, on the 8th of October, for 5 and a half hours, to make repairs on the boiler and engine, and on the 12th for 2 and a half hours to plug leaking tubes; and on the 17th, for 2 hours, for repairs to the boiler. This indicated a condition of things which required that the boiler should be thoroughly repaired before starting on the return voyage. But the repairs made were not thorough, as shown by the result. The return to Galveston was the result of the co-operating judgment of the captain and the chief engineer that such return was necessary. On the return voyage the vessel put into Key West, arriving there at 3 p. m. on the 14th of November. During the passage to Key West the boiler leaked, though there was no stoppage. The vessel left Key West on the 15th, at 2.30 p. m. On the 16th and 17th the boiler leaked. On the 18th the vessel stopped for 7 and three-quarter hours, and stopped up 3 tubes, and on the 21st she stopped for 4 and a half hours, and stopped up one tube and repaired three others. She arrived at, Delaware City 3 and a half hours below Philadelphia, at noon, on November 22d, with 26 of her tubes plugged up.

The quarters of beef were on slatted racks in a refrigerating room in the hold of the vessel. In such room was a box, standing on the floor, about four feet square, and eight or nine feet high. This box was replenished with ice from time to time. By machinery outside of the room, the air of the room was driven through the box, and into contact with the ice, and out again into the room, constantly circulating. There was no opening into the room except by a hole in the top, and there was an opening into the box from the outside of the room to replenish the box with ice from the general depositary of ice elsewhere.

The difficult question in the case is as to whether it is
229 satisfactorily shown that the beef was spoiled and lost through the causes set forth in the libel. The burden of proof is on the libellants, to show this. The averment of the libel is, that, by reason of the detention of the steamer at Galveston while making repairs, and by reason of the detention of the steamer in making her passage from Galveston to Philadelphia, owing to the unseaworthy condition of the boiler-tubes, and by reason of the hot water which escaped from the

defective boiler-tubes and was negligently allowed to run into the bilge of the steamer and melt the ice in the refrigerator where the fresh beef was stowed, the beef became damaged, spoiled, and entirely lost to the libellants. It is not enough to show the unseaworthy condition of the boiler-tubes, and that the vessel was detained at Galveston to repair them, and was detained on her passage by reason of them and to repair them, and that hot water escaped and ran into the bilge, and some ice was melted from such cause. It must be shown that but for such things the beef would have been and was unspoiled, and merchantable as fresh beef.

Zane, the person who came in the vessel from Galveston in charge of the beef, testifies that when the vessel left Galveston the first time, the temperature of the room was 39° Fahrenheit; that while they were stopped at sea, outside of Galveston, it rose to 46°; that when they returned to Galveston it was 44°; that the day before they arrived at Key West it was about 50°; that they had about 100 tons of ice when they left Galveston the first time, and about 95 tons when they left there the second time; that they had about 15 tons left when they reached Key West; that they procured 20 tons more at Key West; that the first day out from Key West (November 16th) the temperature of the refrigerating room was about as usual, say 40°; that the next day it became 60°, and afterwards increased to 68°, when they were about at Cape Hatteras; that then the beef spoiled, and part of it was thrown overboard; and that, at that time, the ice was not quite all used up.

230 The libellants contend that the beef remained unspoiled until after the vessel had left Key West for Philadelphia, and that the cargo would have been landed in good merchantable order at Philadelphia before the time it in fact spoiled, but for the detentions specified in the libel, because, but for such detentions it would have been at Philadelphia unspoiled, at a time when it was at sea, unspoiled.

No complaint is made as to any loss of time by putting in at Key West. From the time the vessel left Galveston the second time (November 7th, at 7 a. m.) till she substantially reached Philadelphia (November 22d, at 3 and a half p. m.) was 15 days and 8 and a half hours. Leaving Galveston October 31st, at 11 a. m., a trip of 15 days and 8 and a half hours would have brought her to Philadelphia, November 15th, at 7 and a half p. m., at which time she was at sea, having left Key West 5 hours before.

Was the beef unspoiled and merchantable at the time the vessel left Key West? Captain Denison, on his direct examination, testifies that he saw the cook cutting some of the beef, and cooking it, and the men eating it, on the Monday after leaving Key West (which Monday was November 18th); that it was on the cabin table, and eaten by some, after leaving Key West, and that it eat as if it was good. On his cross-examination, this is his evidence:

"Q. Did not you yourself, at that time, at Key West, after the attempt was made to get the beef, say it was stinking?—A. I do not remember that I did. Q. Will you swear you did not?—A. I will not. Q. Will you swear it was not stinking?—A. I will not swear. Q. Was it not, in fact, beginning to taint?—A. That is a hard question for me to answer, because I did not know the condition of it then. Q. You have been swearing to something about its condition; I ask whether it was not beginning to taint?—A. I had my suspicions about it. Q. Were not your suspicions that it was beginning to taint?—A. I was told it was not. Q. Did you not know that that beef was beginning to taint at that time?—A. I would not swear it was good, nor would I swear

it was bad. Q. You were one of the persons interested in the beef?—A. I was very anxious to get it here safe. Q. Did you not state in Key
231 West at that time that it was beginning to taint, or was tainted? A. I might have said so, but I do not remember. Q. Did you not say to Mr. Sherman, your chief engineer, that the beef stank, at Key West?—A. I may have said so, but I do not remember that I did; I will not swear I did not, because I said a deal about the beef being bad. Q. Did you not say, at Key West, that it was "all up"?—A. Not that I remember. Q. You will not swear you did not?—A. I will not swear I did not. Q. Did you not say, in Key West, that you were very much worried about buying the ice, as you thought it was so much money thrown away?—A. I said, in Key West, that I would not buy the ice, if the party in charge did not give me a written order to buy it. I may have said I feared it; ice was so very high there that I hated to buy it, and I thought we had enough, when we left Galveston, to see us home."

Zane, in his direct examination, says that the beef was in good order when they arrived at Key West; that he is sure it was good the Tuesday morning after leaving Key West (which Tuesday was November 19th); that he knows it was good then, because he ate of it, and saw others eat of it; that he examined it himself, and that he detected indications of its spoiling the next day. On cross-examination he says that he gave some of the beef to one of the government vessels at Key West, and it was good.

The evidence shows that this was an experimental voyage, to see whether the refrigerating apparatus and machinery would work successfully. There were 15 tons of ice left on arriving at Key West. The consumption of ice from Galveston to Key West in 7 days and 8 hours had been 80 tons. The running time of the vessel from Key West to Philadelphia was 6 days and 12 and three quarter hours, after deducting the stoppages, yet the vessel did not have 35 tons of ice (including the 20 purchased at Key West) for use during that time. The same rate of use as from Galveston to Key West would have required over 71 tons for the voyage from Key West to Philadelphia, instead of 35 tons. If the beef was good at Key West, these facts would tend to show that its subsequent spoiling was due to a want of sufficient ice, or, if
232 there was ice enough, to the inability of the apparatus to preserve the beef. Notwithstanding the delay, the libellants were bound to use all accessible means to preserve the beef. If ice was needed and could be procured, it should have been procured at Key West, and such additional expense, and not the loss of the beef, have been thrown on the claimants. It does not appear that more ice could not have been obtained at Key West. The impression produced by the evidence is that, as the ice was going out the beef began to spoil, and that it spoiled because the ice gave out. The first day out from Key West, the temperature of the refrigerating room was about 40°, the usual, and, as I understand from the testimony, the proper temperature. The fact that so small a supply of ice was procured at Key West, and that there was such reluctance on the part of the captain to procure what he did, looks in the direction, very strongly, of a spoiled condition in the beef at Key West, or such a condition as made it substantially unmerchantable when it reached Key West. This is confirmed by the halting testimony of the captain. If true, then the delay before the vessel reached Key West was not the reason why the beef did not reach Philadelphia in a merchantable condition; because the delay before reaching Key West was only 7 days, and the running time from Key West to Philadelphia, added to the time the vessel remained at Key

West, was 7 days and 12 and a quarter hours. If the beef was good at Key West and spoiled afterwards for want of ice, the claimants are not shown to be responsible for the loss. If there was plenty of ice after leaving Key West, and yet the beef spoiled, it would indicate inability in the apparatus to prevent the spoiling, and for this it is not shown that the claimants are liable.

As to any melting of ice by hot water in the bilge, any effect therefrom to spoil the beef is covered by the views before stated. But I am not satisfied from the evidence that any hot water in the bilge, from the leaking tubes, had any effect to raise the temperature of the refrigerating room, or to melt any ice.

233 On a full consideration of the whole case, I can come to no other conclusion than that the libellants have not made out the cause of action set forth in the libel, and that it must be dismissed, with costs.

R. D. Benedict, for the libellants.
C. Donohue, for the claimants.

234 U. S. OF AMERICA, SOUTHERN DISTRICT OF NEW YORK, *City, County, and State of New York*, ss:

Be it remembered, that on this 29th day of June, in the year of our Lord one thousand eight hundred and seventy four, I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act, in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at number 71 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Horatio G. Zane, to testify and the truth to say, on the part and behalf of the appellants, in a certain suit or matter of controversy, now pending and undetermined, in the circuit court of the United States, for the southern district of New York,

235 at New York, on appeal from the district court of said district, wherein Jacob M. Duncan and Simon Poey are libellants and appellants against the steamer Francis Wright, her tackle, &c.

And thereupon the said Horatio G. Zane, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Horatio G. Zane, and he did thereupon depose, testify and say as follows, viz:

I am 36 years of age. I was examined on the trial in the district court. I was present in Philadelphia when the Francis Wright was fitted up for this voyage. I did not have anything to do with the fitting up. I saw how it was done, but am no carpenter, and did no part of the work.

Diagram shown witness.

Q. 1. Look at that diagram, and see whether it represents substantially the refrigerating apparatus in question.

A. It does.

Diagram marked A, E. L. O., June 29th, 1874.

The two places marked beef are one room in the apparatus, the refrigerated room; the ice box was in it, and the room went all around it. The ice-box was about four feet square, and about nine feet high. At the after part of the refrigerated room, above, was the blower, as shown on the diagram; a donkey engine worked the fan; that donkey engine stood in the engine-room, aft of the blower; it was boxed off from the engine-room. The donkey engine was put in by the charterers of the ship; it got its steam part of the time from a donkey boiler and part of the time from the main boiler; the donkey boiler belonged to the ship, and was on board of her when she was chartered. The fan drew the air from the refrigerated room, through an opening, as described in the diagram to which the arrows are pointing, and sent it through the tube, as marked by the arrows, to the bottom of the
236 ice-box; from there the air went through the ice-box to the top of the box, and thence by another passage and down into the refrigerated room, as marked by the arrows. The water arising from the melting of the ice in the ice-box was carried off in this way: two metallic tubes, about an inch and a quarter in diameter and four inches high above the floor of the ice-box were carried through the floor into the bilge and through these tubes the water escaped; the water would have to be four inches deep on the floor of the ice-box in order to be carried off. The ice-box was set on the floor of the ship, and was water and air tight with the exception of those two pipes and the place to put the ice in, which shut air-tight; there were no other openings in the ice box except the air chamber; there was no such hole into the ice-box, six inches long and two inches wide, if Mr. Tilton is to be understood as saying so, after the tubes were put in; at first we had that hole for the melted ice to run off, and then it was stopped up and the tubes were substituted. I think the melted ice from the ice-house ran off through holes through the scuppers of the ship. The ice-box, when full, held about eight tons; we generally replenished it when the ice was two feet down from the top. I have prepared a model of the ship, which I also produce, which shows one-half of the refrigerating apparatus, except that the air passage is not complete, and the tubes in the bottom of the ice-box are not there, nor the holes from the ice store-house.

Model marked B, E. L. O., June 29th, 1874, for identification.

I have carried fresh beef with such an apparatus before and since in the steamship Fire Fly; the voyage before was in August, 1871, from Rockport, Texas, to Philadelphia; and the voyage subsequent was from Philadelphia to Havana in March, 1873.

Q. 2. How did the apparatus used on the Fire Fly on these two voyages compare with the apparatus used on the Francis Wright?

237 (Objected to as immaterial.)

A. They were alike.

Q. 3. How as to size?

(Objected to as above.

A. They were very nearly the same; but on the Fire Fly there was a forward hold and an after hold, with a refrigerating apparatus in each of them, the two together being about the same size as the Francis Wright.

Q. 4. In what condition were these cargoes brought?

(Objected to.)

A. In good order.

Q. 5. And how long were the several voyages?

(Objected to.)

A. The first about twelve days, the second about twenty-two days.

Q. 6. Did you dispose of the beef at the end of each of those voyages?

(Objected to.)

A. Yes.

Q. 7. What was the condition of the beef when disposed of?

(Objected to.)

A. Good.

I joined the Francis Wright on her arrival at Galveston, October 17, 1872, at 7 p. m. I began to put cargo on board 22d day of October, about eight o'clock in the morning; we started the fan on the 20th of October; I cannot give the hour, but think it was about ten o'clock in the morning; from that time until we began to load the fan was run by steam from the donkey boiler; it was run not more than nine hours during that time. I kept a memorandum book of the occurrences from the time I left Philadelphia, which I have in my hand. I cannot give the temperature of the refrigerated room from the time the fan was started until we
238 finished loading; I made no memorandum of that temperature.

On the 23d day of October we loaded about forty beeves and on the 29th we finished loading; the intermediate time I have no memorandum of, we loaded about three hundred, I think. We did not load the entire carcass of some of them. When the beef was taken in it was all sound. The fan was kept running about three-fourths of the time while loading. I speak from memory and not from memorandum, and during all this time it received its steam from the donkey boiler; there was no steam on the main boiler during that time. The donkey boiler worked badly and that was the reason the fan did not work all the time; we had to stop for repairs; I could not say what the repairs were; it worked badly and it was stopped for some improvement to make it work better. We got away from Galveston on the 31st; there was steam on the main boiler on the 30th, and the fan was run by that steam on that day; the temperature of the refrigerated room that day, the 30th, was 40 deg., and ran down to 30 deg. I made a memorandum of those temperatures; I determined the temperature by the use of the thermometer; one was placed beneath the main hatch, about half-way down to the floor of the room, and the other at the after end of the refrigerated room near the fan; I could put this thermometer down through a hole made for that purpose, into the refrigerated room; this hole was plugged up after taking the observation; these were the only thermometers we used; both of the thermometers were there permanently. We would pull them up, look at them, and then put them down and plug the holes up again. I can't tell the hour, by memorandum, that we got away from Galveston; on the same day, at five p. m., we had trouble with the main boiler getting out of gear. I know about that. I know we had no steam and the ship could make no headway; the fan stopped. I
239 can't state positively how long the fan stopped; steam was not got on the donkey boiler. After the fan stopped the temperature of the refrigerated room was 42 deg. and 38 deg.; that was by the two different thermometers; the one at the hatch was 42 deg., it was the highest up; the other was 38 deg., and was at the bottom of the room. We put back to Galveston November 1st. The fan stopped at six o'clock on the 31st, and started on the 1st of November, at 10½ a. m.; when it started the thermometer at the hatch stood 43 deg. I have no record of how the other stood; the fan stopped November 1st, at 5½ p. m.; the temperature at that time was 40 deg. at the hatch and 36 deg. at the fan; at midnight it was 41 deg. at the hatch. I have no record of the other.

On the 2d of November it stood 41 deg. at the hatch; during that time the fan was not running.

The fan started again November 3d, at 10 1-2 a. m., the temperature then at the hatch was 43 deg.; at 6 p. m., 40 deg. at the hatch; 9 p. m., 39 deg. at the hatch; fan stopped.

The fan started again at 8 a. m. on the 4th of November; the temperature then was 44 deg. at the hatch; at 9 p. m. the temperature was 39 deg. at the hatch and 36 deg. at the fan; the fan stopped at midnight of the 4th.

At 6 a. m. of the 5th the temperature at the hatch was 45 deg.; the fan started at 7 1 2 a. m.; at 10 a. m. the temperature at the hatch was 40 deg., and at 6 p. m. 42 deg. at the hatch; the fan was idle during that day, five hours. On the 6th the fan ran well; at 6 a. m. the temperature was 40 deg. at the hatch; 10 a. m., 39 deg. at the hatch; 4 p. m., 39 deg. at the hatch. On the 7th the temperature averaged 40 deg. at the hatch; the fan ran fourteen hours; this was the day we left Galveston. While we had been lying in Galveston, after our return, the fan had not been run by steam from the main boiler any of the time. Nov. 8th, temperature 39 deg. at the hatch all day and night as well. The fan was run by the main boiler. On the 9th the temperature was
240 42 deg. at the hatch; there was trouble with the main boiler and no steam; at 4 p. m. the temperature at the hatch was 44 deg. On the 10th the temperature at the hatch was 44 deg.; that day we used an abundance of ice and salt, throwing the salt on the ice in the ice-box. On the 11th the temperature was 39 deg. at the hatch; my memorandum is "getting along fine." On the 12th my memorandum is, "weather good, sea smooth, running slow, no steam, temperature at hatch 44 deg." On the 13th my memorandum is, "trying to keep down the temperature by use of salt, something wrong." On the 14th we arrived at Key West about 3 1-2 p. m.; there is no memorandum of the temperature. At Key West we got ice; I had charge of getting ice; Captain Dennison had nothing to say about it, I mean he had no control. When we got to Key West we had seventeen tons in the ice-house; when we left Galveston the last time we had from 75 to 100 tons of ice; when I say so may tons, we never took account of what was in the ice-box, which generally contained about six tons. I ascertained the quantity of ice we had on arrival at Key West, by measurement, allowing sixty pounds to the cubic foot.

Q. 8. For what purpose did you take this measurement?

(Objected to)

A. In order that I might have the same quantity on board as I had on a former occasion.

Q. 9. What occasion was that?

(Objected to.)

A. The first trip of the Fire Fly.

Q. 10. How much ice did you leave Key West with on that first trip of the Fire Fly?

(Objected to.)

A. About forty-two tons.

Q. 11. Did that forty-two tons last you to Philadelphia?

(Objected to.)

241 A. Yes; and same to spare.

Q. 12. What month was that?

(Objected to.)

A. In August. There was an opportunity to have bought more ice at Key West than I did buy.

Q. 13. Why didn't you buy any more?
(Objected to.)
A. I had no use for any more; I did not want any more.
Q. 14. Why not?
(Objected to.)
A. What we had was amply sufficient. We left Key West on the 15th about one; I kept no record of the temperature while we were at Key West; I examined the beef there, it was in good condition; some of it was used by the ship's crew and at the Russell House; I gave some beef to Mr. Tift of Key West, he is an ice and coal merchant there; I gave some to an United States man-of war.
Further examination adjourned to the 30th, at 9 a. m.

JUNE 30TH.

Met pursuant to adjournment.
Present, commissioner, proctors for respective parties.

HORATIO G. ZANE continues on his direct examination:

I assisted in getting out the beef given to the parties in Key West; it came from immediately beneath the hatch on the upper tier; the quantity given away was a quarter and a third of a quarter; it was off two different quarters; it was lowered over the side onto the wharf; the ship was lying at the wharf. The fan was run while we were lying at Key West; it might have been idle a portion of the time; I can't remember whether it was run by steam from the main boiler or donkey boiler. We left Key West about 1 p. m. of the 15th.; my entry is, on November 16th, "left Key West yesterday about 1 p. m." I have no entries of temperature while at Key West. The entry on the 16th is, "got on fine last night; temperature at noon to-day, 38°;" this temperature was at the hatch. On the 17th the entry is, "boiler leaking, fan idle, temperature 56° at the hatch." On the 18th the temperature at 6 p. m. was 68° at the hatch; I noticed that the ice was melting very rapidly that day; my attention was first called to it about 9 a. m.; made an examination into the matter; I first examined the thermometer immediately beneath the hatch; found the temperature 68°; I then entered the hole forward of the ice-box and went into the refrigerated room and found the floor of the refrigerated room very warm; I found the floor was warm by feeling; I was forward of the ice-box in the refrigerated room; I could not get aft of it; I then came on deck and inquired of the captain what was the cause; he gave me no idea whatever; I returned a second time to the refrigerated room, and on careful examination concluded (conclusion of the witness objected to) that it was heated by hot water from the boiler.

Mr. Stillman asks the commissioner to put down "there was no earthly way to find out," claiming that the witness said that in answer to the last question; the witness being asked whether he said that, says that he thinks what he says was, "there was no other way to find out."

Q. 15. From what facts did you draw the conclusion that the heat of the floor was occasioned by hot water in the bilge?
(Objected to as leading.)
A. As the boiler before that time was leaking badly, I know of no other fact. The boiler was leaking badly two or three hours before this. I knew this, because I saw it leaking. I made the second examination between 9 and 10 in the morning. I made this examination the same way as the first. I don't remember

testing the heat at the floor by the thermometer. I made a memorandum that day in reference to the floor being hot. During the 18th the fan was running a portion of the time. On the 19th the entry reads: "The refrigerated room this morning is very hot; used up two boxes of ice since morning." This was at 12 o'clock noon. At 12 o'clock I gave up attempting to save the beef. Up to this time the ice-box had been kept so that it would average three-quarters full from the commencement of loading. At 12 on the 19th, I think it was only about one-third full. There was about eight tons left in the ice-house, I think.

Q. 16. Does the quantity of ice in the ice-house affect the refrigeration of the beef in that apparatus as long as the ice-box is kept supplied?

(Objected to.)

A. If the ice-house was full it would affect it somewhat. The quantity of ice in at that time would affect the refrigerating room very little.

Q. 17. If the ice-box is kept supplied and the fan kept steadily in motion, is the presence of ice in the ice-house necessary or important to the successful working of the apparatus?

(Objected to.)

A. No, sir.

Q. 18. What amount of ice is necessary in the ice box for the successful working of the apparatus if the fan is kept constantly in motion?

(Objected to.)

A. The nearer full the better. If you understood that you would not ask such a question.

Q. 19. You understand it. Please explain why I would not ask such a question.

(Objected to.)

A. If the temperature at the time was, say, 32° Fahrenheit,
244 one pound of ice would be sufficient, or none. If 38°, one-third full would be necessary. If 40°, full.

Q. 20. Where do you take the temperature?

A. At the warmest place, under the hatch in the refrigerated room.

Q. 21. At what temperature is it necessary to keep the refrigerated room for the preservation of the beef?

(Objected to.)

A. Forty degrees will preserve it a given length of time—about a month.

Q. 22. With the temperature at 40°, how often is it necessary to replenish the ice-box?

A. Twice in twenty-four hours; and it would need from twelve to fifteen hundred pounds to replenish it.

Q. 23. What would be the effect on the apparatus of allowing hot water under the floor?

(Objected to.)

A. It would create a heat. The heat warming the air which was driven by the apparatus through the ice-box would consume the ice more rapidly.

Q. 24. Would it have any effect on the temperature of the room?

(Objected to.)

A. Yes, sir.

Q. 25. Would the more rapid melting of the ice have the effect to

reduce the temperature enough to counteract the effects of hot water under the floor?

(Objected to.)

A. After a time it would.

Q. 26. Was there any other cause apparent for the high temperature of the room on the 18th, except the heating of the floor?

(Objected to.)

A. No, sir.

Q. 27. When the beef begins to spoil what effect does that have on the temperature of the room?

A. It commences to heat it.

245 Q. 28. Would heat produced in that way be more perceptible on the floor or at the top of the room?

A. At the top of the room.

Q. 29. When you made your examination of the room on the 18th, where was the heat most perceptible, at the top or the bottom, or on the floor?

A. In the morning at the bottom, at noon at the top.

Q. 30. When you made your examination of the room in the morn- of the 18th, what was the condition of the meat?

A. I believe every pound of the cargo was in good order.

Q. 31. What examination of the beef did you make at that time?

A. At the places where I had access to it, I examined it by taking a knife and cutting into it, and by running a steel through the quarter around the bone. I then determined its condition by smelling the steel. As far as I examined I found no scent of taint whatever. I don't remember that the fan was run at all, after leaving Galveston, by the donkey boiler. The donkey boiler worked very badly.

Q. 32. Whenever the donkey engine was worked by the donkey boiler, how did the fan work?

(Objected to.)

A. It made one-third less revolutions than it ought to have done. There was no time that I remember that the fan worked as it ought when the steam came from the donkey boiler. The donkey engine was a capital engine, and aside from the lack of steam there was no difficulty with it. That engine was used on both the other voyages and worked well.

Q. 33. From your experience with that apparatus, with a fan kept constantly in motion, and the floor of the room not heated by hot water from the boiler, how long a time could beef be preserved in it and be merchantable, if the ice-box was kept supplied?

246 (Objected to.)

A. Thirty-five days. I have kept it that length of time. I had conversation with Mr. Sherman about the boilers giving out at different times during our passage from Galveston to Key West.

Q. 34. What did he say?

(Objected to.)

A. That we would be all right again in a little while. I can't give the exact language of the different conversations.

Q. 35. Did he say anything in reference to the fact that the boiler had given out?

(Objected to.)

A. He said we would have to stop for repairs.

Cross-examination:

I am in the business of handling fresh beef, fruits, and vegetables. I mean by buying beef and mutton at wholesale, fruits and vegetables

at wholesale, and wholesaling and retailing. I carry on this business at 3822 Market street, West Philadelphia; I buy my mutton at the Twenty-fourth Ward market, Philadelphia; I buy beef at Tenth and Hamilton streets, Philadelphia, and at Thirty-first and Hamilton streets, West Philadelphia; I keep what we call a market-house in Philadelphia.

Q. 36. You are what we usually call a butcher?

A. I am not aware of that fact.

Q. 37. What is a market house?

A. A place where meats, fruits, and vegetables are kept for sale. I have been dealing in beef three years. In that time I have bought my beeves killed, and have killed them myself. I have not a partner. I have been in business without a partner since about the 20th of March last.

Q. 38. Who furnished you with your capital to start with?

(Objected to.)

A. No one.

247 Q. 39. What amount of capital have you in your business?

(Objected to.)

A. It varies very much according to the number of cattle we have on hand. I require from one to five hundred dollars capital in my business. I have no more in my business than I require. I was foreman of a glass manufactory from about three years previous to my engaging in the beef refrigerating business. I left the glass business in 1869, and went into the beef refrigerating business about the first of 1870. I went into the beef refrigerating business by shipping beef from Rockport, Texas, to the city of New Orleans. I was in that business about two months. I did not send any cargoes during that time refrigerated. After that I went into the same business for Henry Dennison & Co., of Philadelphia. I went into their employ about the middle of June, 1871. I shipped one cargo for them prior to the one by the Francis Wright. That was a cargo of refrigerated beef. I sent no other cargo for them. The only experience I had had in shipping refrigerated beef was the shipment of one cargo prior to the Francis Wright. I had had experience in refrigerating beef in smaller refrigerators, built on the same principle as this. We kept it in small refrigerators in Philadelphia in 1870, merely by way of experimenting. I can't tell how many refrigerators we used. I remember we had two. The fan on those was run by hand power. We did not keep the fan running all the time. We run it at intervals, whenever we found the temperature 40 degrees or over—whenever we happened to be around. The experimenting occupied about three months. I think it was during spring and summer. I think it was some time between the 1st of August and last of September, but I can't remember. I will not swear that we experimented in July or August, or June. I was experimenting for myself and for the

248 United States and West India Fresh Meat and Fruit Company. I was not in any one's employ then. The United States and West India Fresh Meat and Fruit Company was created for the purpose of shipping perishable articles of food between the different ports of the United States and the West Indies by a process known as Bray's patent refrigerator. I believe that company is in existence. It does not carry on business. I don't know that that company is bursted up.

Q. 40. Do you know who are the prominent men in that company?

(Objected to.)

A. Wilson Bray, J. H. Ridgway, J. M. Dalton. I can name others. I am interested in this company.

Q. 41. Have you ever received any dividends from your stock?
(Objected to.)
A. I never put a dollar in my pocket from it, but the company have declared dividends, which were used.
Q. 42. Do you know why it has ceased to carry on business?
(Objected to.)
A. No; directly I do not.
Q. 43. Have you ever made any inquiry of any of the officers of the company why it suspended operations?
(Objected to.)
A. Yes, sir.
Q. 44. State the reasons that were given.
(Objected to.)
A. Through a misunderstanding between the parties in Philadelphia and Cuba; it was something in relation to their finances; the company has no money.
Q. 45. Do you know what the capital of that company was?
(Objected to.)
249 A. No, sir; I never was employed in that company; I am not experimenting for that company now; I ceased doing so in 1870. I can't remember how long after I ceased experimenting for that company that I went into the employ of Henry Dennison & Co.; it might have been a year; during that year I was operating in the beef business in Rockport, Texas.
Q. 46. You say you made all the entries in the book relating to this voyage on the day they are dated?
A. I wrote the entries at the time of the date, but sometimes they contained occurrences of the day previous.
Q. 47. Look at the entry dated the 15th, and state whether that entry was made on that day—the whole of it.
A. I think it was; I will swear that it was made on the day it bears date.
(Entry of the 15th marked for identification, 1, E. L. O., June 30th, 1874.)
This book has been among my private papers all the time except when it has been in my pocket and here; I think I had it here when I was examined in the district court.
Q. 48. When did you first show it to any person connected with this case?
A. Last Thursday.
Further examination adjourned to 1st of July at 9 a. m.

JULY 1ST.

Met pursuant to adjournment.
Present, commissioner and proctors for respective parties.

HORATIO G. ZANE continues on his cross examination.

Q. 49. You said you showed that book for the first time to any one connected with this case last Thursday. Who did you show it to?
250 A. Mr. Benedict. I don't remember whether Mr. Benedict asked for the book, or whether I showed it to him. I never showed that book to Mr. Flanagan, or Mr. Poey, or Mr. Duncan, or Captain Dennison, or tell them or either of them that I had it. I have talked some with Mr. Benedict, and with Mr. Coulston, of Philadelphia, since the time. Mr. Coulston is counsel for the libellants in this case. I think I first spoke to Mr. Coulston about this memorandum book on

Saturday last. I did not tell the counsel for libellants that I had the book with me on the trial.

Q. 50. And the first any one knew of your having it was last Thursday, was it?

A. I can't be positive; I think so. The fan on the Francis Wright should have made about 300 revolutions a minute to have worked properly.

Q. 51. Did any air from the outside get into the refrigerated room during the voyage? And, if so, state how it got in there.

A. Yes; when the hatches were removed, in order to examine the thermometer below or to get beef from the refrigerated room for the use of the vessel and for the parties at Key West; that is all the air that got in, except while loading. We were loading during two or three hours, during which time the hatches would be open. When we stopped loading the hatches would be shut. There was a small hatch cut into the large hatch, through which the beef was lowered—one quarter and sometimes two. One or two quarters would be lowered beneath this trap, then the trap would be closed; then one or two more lowered, and then the trap would be closed again, and so on. The beef came to the ship in quarters, from Allen & Poole's slaughter house, which is in the suburbs of Galveston, about three miles from the ship. It came by rail, in ordinary box or slat cars. I was employed in the glass works three or four years; was foreman; before that I was a farmer.

Q. 52. Did you write to any one from Galveston that you were doubtful about getting the beef home?

251 A. No, sir.

Q. 53. Did you write anything to that effect?

A. Not that I remember of.

Q. 54. Will you swear that you did not?

A. To the best of my knowledge, I do. When we were loading the beef the weather, part of the time, I think, was very warm. It was on Sunday; I don't recollect the date. It was only one day that it was particularly warm. The other days were ordinary weather for that season. I can't tell the temperature, as I did not examine the thermometer.

Q. 55. You say that the temperature at 40° will preserve beef a month. Does it make any difference how long the beef has been killed, provided it is not tainted, when you first subject it to that temperature?

A. It might, and might not. I mean that if when the beef was slaughtered the temperature was, say 60 deg., decomposition would be more rapid than if the weather was 32 deg. when slaughtered.

Q. 56. Supposing the beef was slaughtered when the temperature was 60 deg., and is put into the refrigerated room at 40 deg., when will process of decomposition commence?

A. I have never kept beef long enough at 40 deg. to see it spoiled. The floor was not wet, but damp, when I went down into the refrigerated room.

Q. 57. What caused the dampness, if you know?

A. I am not positive.

Q. 58. Can you preserve beef better in damp air than dry?

A. No, sir.

Q. 59. If at a temperature of 40 deg. the air is damp, what effect will that have upon preserving the beef?

A. No effect, that I am aware of, of preserving the beef.

Q. 60. How will it affect the beef?

A. After a time it will create a blue mould on the surface; say

252 three days after. It will make the beef mouldy, but not affect the sweetness of the beef; it will not taint it.

Redirect:

The blue mould affects the surface of the beef; but cutting that off, the quality of the beef underneath remains the same. We received about 40 cattle on that hot Sunday. I was present when a part of the cattle were killed. They were received at the ship about eight hours after they were killed. I saw about forty killed. Mr. Reeder was present when the rest were killed. I don't know whether he was present when all the rest were killed. I recollect coming on here with Mr. Coulston, and having an interview with Mr. Benedict shortly after the decision was made in this case. I recollect Mr. Benedict reading over the decision of the judge in that interview. I had not seen or heard the opinion of the judge before that.

Q. 61. Do you recollect our talking in that interview about the temperature in the refrigerated room, and your speaking of the memoranda that you had in relation to it?

A. Yes, sir.

Q. 62. What memoranda did you have in your mind at that time?

A. The same as I have referred to on this examination in my memorandum book. I did not have the memorandum book present at that interview.

Q. 63. Was not that the first that you had told either Mr. Coulston or myself of your having kept a memorandum book during the voyage?

A. Yes, sir.

Q. 64. Are you not mistaken about your having had that memorandum book here on the former trial?

A. I am not positive whether I had or had not.

Q. 65. After the interview between yourself and Mr. Coulston and myself, did you look up this memorandum book?

A. Yes, sir.

253 Q. 66. Had you made any entries or change in it between the time of the trial and the time you looked it up?

A. No, sir; I never saw it during the intermediate time.

Q. 67. Have you made any since?

A. No, sir.

Q. 68. Have you ever made any changes in those entries since they were first written?

A. No, sir; not a letter or figure. In the testimony in reference to the United States and West Indies Fresh Meat & Fruit Company, either Mr. Stillman or myself misunderstood each other. A portion of the question then asked me I answered, relating to the two companies; that is, the chartered company and the private company.

Q. 69. When you answered question No. 43, which did you refer to, the corporation or Duncan & Poey, the company?

A. I referred to Duncan & Poey. The United States and West Indies Company have not suspended operations; they are carrying operations by leasing out or attempting to lease out the rights and privileges for transporting perishable articles under Bray's patent. That company was never engaged in the business of transporting itself, only experimentally, as far as I know. When I examined the beef in the refrigerated room on the 18th I examined not less than twenty quarters—all that were accessible. When I examined the ice-box on the morning of the 18th it was almost, if not entirely, empty. It had been filled between ten and twelve the night previous. That was a very extraordinary consumption of ice.

Q. 70. When you made the entry on the 13th, "Something wrong," what did you refer to?

(Objected to.)

A. Something different from what I had ever known before, and at that particular time could not account for; that was the extraor-
254 dinary amount of ice in the ice-box and salted, and still the temperature was not reduced.

Q. 71. Did you examine the beef on that day as to its condition?

A. Yes, sir; I examined the condition of the beef about every day of the voyage.

Q. 72. Was there anything in the condition of the beef on that day to account for the fact that the temperature was not reduced in the refrigerated room?

A. No, sir. I bought the ice at Key West myself.

Q. 73. What, if anything, did Captain Dennison have to do with the purchase of ice?

(Objected to.)

A. Nothing whatever.

Q. 74. How was it paid for?

(Objected to.)

A. By draft on Duncan & Poey; Mr. Tift drew the draft; Captain Dennison signed it; Mr. Tift was the man we bought the ice of.

Q. 75. When did the second voyage of the Fire Fly take place?

(Objected to.)

A. We left Philadelphia on the 10th of March, 1873, and arrived in Havana April 2d; I examined all the beef that went into the Francis Wright; it went in under my inspection; where I had a doubt as to its condition, I examined it by running a steel through the beef; none of the beef had any taint on it when it went in except that which was sent out again; I think there were three pieces lowered into the room, but which I rejected, and they were sent out.

Re-cross:

I was either in the hold or on the deck when I examined every piece; when I say hold I meant refrigerated room, which is the hold; I cut up a portion of the beef; a butcher we employed in Galveston helped me, and also Mr. Reeder, who was a passenger, or went by invitation; these are all I remember who cut up the beef; I will not swear posi-
255 tively that no one else assisted in cutting it; I remained in the refrigerated room at a time from one hour to four, and while I was down there the beef was being passed down; I did not put it on the racks; the laborers put it on the racks; the second mate bossed the job; sometimes there were half a dozen men in the refrigerated room at a time; we did not cut off any of the beef because it was tainted, but we did trim off the necks and the briskets in order to give more room for the better parts of the bullock; when I was in the hold I could not see on the deck or the dock; they were cutting and trimming the beef on the deck while I was in the hold, and some on the dock. The cars came within about thirty-five feet of the vessel; the slat cars had tops.

Re-redirect:

Q. 76. You said, on cross-examination, that you would not swear that you experimented in July, or August, or June; will you swear that you experimented in March, or April, or May?

A. No, sir; I will not, because I don't remember the month.

H. G. ZANE.

Subscribed and sworn to before me this 1st day of July, 1874.

EDWARD L. OWEN,
U. S. Commissioner.

(From Zane's book.)

Oct. 4, '72. Left Phila. for Texas at 12.40.
" 5, " Arrived at Cinn. 5 p. m.; went to exposition.
" 6, " Left Cinn. 1 a. m., arrived at Louisville 6 a. m., left at 7.15 p. m.
" 9, " Arrived at N. C. 10½ a. m.
" 10, " Left for Galveston via Brashear City.
" 11, " Arrived at Galveston about 12 m. Slept at Washington Hotel; called on Allen, Poole & Co.

256 Oct. 13, " Myself and Mr. W. at Allen's rancho.
" 14, " Mr. W. returned to city last night. I have spent the day on horseback and am about used up.
" 15, " More horseback riding; returned to city at 8 p. m.
" 16, " Visited theater—dull amusement.
" 17, " Anxious to see the F. W. Sighted her at 3.15 p. m. Landed about 7.
" 18, " Went at to ranch.
Oct. 20, 1874. Come in with first lot of cattle. Capt. and W. decided to keep me at the ship; tried the blower; donkey boiler does not steam well.
" 21, " At the slaughter house; commenced to kill about noon to-day.
" 22, " Blower run all night; first beeves at ship; look better than I expected.
" 23, " Tired out; loaded about 40.
" 29, " About through loading; God knows am glad of it; anxious to have steam on main boiler; donkey works bad.
" 30, " Main boiler at work.
Tem. 40° and 30°; coming down fine.
" 31, " Off for home; W. left behind; is no doubt afraid of the ship; 5 p. m., the devil to pay; boiler out of gear.
" 31, " Night; some tubes gave out; fan stopped; tem. 42° and 38°.
Capt. called on me to consult what to do; advised him to put back.
Nov. 1, " Fan stopped last night, 6; tem. 43°.
Fan started 10½ a. m.
" stopped 5½ p. m.
Tem. 40° and 36.
" 41° midnight.

257 " 2, " Tem. 41°.
" 3, " Fan started 10½ a. m.
Tem. 43°; 6 p. m., 40°; 9 p. m., tem. 39°; fan stopped.
" 4, " Fan started 8 a. m.; tem. 44; 9 p. m., 39° and 36.
Told chief must run continually.

" 5, " Fan stopped at 12 last night.
Tem. at 6 a. m., 45°; started at 7½ a. m.
" " 10 a. m., 40; 6 p. m., 42.
Fan idle to day 5 hours; this work will never do.

" 6, " Fan run well; tem. 6 a. m., 40; 10 a. m., 39; 4 p. m., 39°.

" 7, " Tem. averaged 40°; fan run 14 hours; some trouble with the chief; off for home; stormy.

" 8, " Tem. averaged 39°.

" 9, " " 42°; trouble with the boiler; no steam, 4 p. m., tem. at hatch 44°; atmosphere condensed on beef; is getting very damp.

" 10, " Tem. at hatch 44; used ice and salt in abundance.

" 11, " Getting along fine; tem. 39°.

" 12, " Weather good; sea smooth; running slow; no steam; tem. 44°.

" 13, " Expected to make Key West; trying to keep down tem. by salt; something wrong.

" 14, " Arrived at Key West about 3½ p. m.

" 15, " Trouble with capt.; took on 20 tons ice; measured ice in house; have got just 37 tons; trouble to get capt. on board; gave Mr. Tift and Russell some beef, also some to U. S. man-of-war.

" 16, " Left yesterday about 1 p. m.; got on fine last night; tem. at noon to day 38°.

258 Nov. 17, 1874. The devil to pay again; capt. near dead; boiler leaking; fan idle; tem. 67°.

" 18, " Worse and worse; ice melts as fast as snow; examine the beef at foot of ice box; was surprised to find the floor very hot; asked capt. what was the cause; went down to examine the second time; concluded it was hot water from the boiler; tem. at 6 p. m. 68°; 9 p. m., R. Don. & M. filled ice box full.

" 19, " Refrigerated room this morning is very hot; am completely disgusted; a sorrowful day for me; used up two boxes of ice since morning; can't get the tem. down any; used about 8 bush. salt; no use; 12 m., gave up saving the beef.

Oct. 21, " 2 p. m. threw overboard part of cargo.

" 22, " Reeder and me will start for Phila.; arrived at Del. City about noon.

" 23, " Expense to Phila. $2.20.

U. S. circuit court.

JACOB M. DUNCAN AND SIMON POEY, APPELLANTS,
ag'st
THE STEAMSHIP FRANCIS WRIGHT, HER ENGINE, &c., Humphry E. Woodhouse, and Joseph Rudd, jr.

Depositions of witnesses taken on the appeal in this cause, on commission, on behalf of the appellants.

259 ROBERT J. PERRY.

First interrogatory. What is your name, age, occupation, and where do you reside?

To the first interrogatory he saith: My name is Robert J. Perry; my age, thirty-six years and upwards; physician and surgeon, attached to the United States Navy; I reside in the city of Key West.

Second interrogatory. Do you know the parties above named, or any of them; if yea, which of them, and how long have you known them?

To the second interrogatory he saith: he knoweth not.

Third interrogatory. Were you at Key West in the month of November, 1872? If you say that you were, state if you remember the steamship Francis Wright arriving at that port, and state if you know what her cargo was composed of.

To the third interrogatory he saith: I was at Key West in the month of November, 1872; I remember that the steamship Francis Wright arrived at Key West about that time; her cargo was composed of fresh beef.

Fourth interrogatory. If, in answer to the third interrogatory, you shall say that the cargo of the Francis Wright was composed of fresh beef, state if you saw or ate of that beef; and if yea, state particularly and in detail what the condition and quality of the same was. How much of said beef did you receive? Did you test the condition by cooking or eating?

To the fourth interrogatory he saith: I saw and ate of some of the fresh beef from the cargo of steamship Francis Wright; the beef was in a perfect state of preservation; flavor fresh and sweet; I received about ten pounds; I tested the condition of said beef both by cooking and eating it.

Fifth interrogatory. Did you go on board the Francis Wright; and if so, did you inspect her cargo or any part thereof? If yea, state particularly and in detail what examination of the cargo you made,
260 and when you made it, with reference to the arrival of the vessel at, and her departure from, Key West; state particularly and in detail the condition of the said cargo.

To the fifth interrogatory he saith: I went on board of the steamship Francis Wright at the time I received the fresh beef; I inspected a large portion of her cargo by examining the texture, order and general appearance of the beef. Found it thoroughly cold, but not frozen. I made the inspection on the day of arrival of steamship Francis Wright at Key West, and I think she left Key West on the afternoon of same day. The cargo of beef had the appearance of being carefully and properly packed and appeared to be fresh and sound.

Sixth interrogatory. Do you know any other matter or thing that

would be of benefit or advantage to the libellants and appellants? If so, state the same fully and particularly.

To the sixth interrogatory he saith, he knoweth not.

Cross-examination:

First cross-interrogatory. Were you in the employ of the libellants herein, or either of them, during the year 1872, and are you now in their employ or connected with them in business in any way? If so, state the connection particularly and in detail.

To the first cross-interrogatory he saith: I was not in the employ of the libellants herein, or either of them, during the year 1872; am not now in their employ or connected with them in business in any.

Second cross-interrogatory. If, in answer to the third direct interrogatory, you shall say that the cargo of the Francis Wright was composed of fresh beef, and in answer to the fourth interrogatory that you saw or ate of that beef, then state how you know that the said cargo was composed of fresh beef; the facts and circumstances under which it came to your knowledge; when and where you first saw any of that cargo; state particularly and in detail how you know that the beef you either ate or received was any part of the cargo of the said Francis
261 Wright, and how much of the said beef you ate, where you ate it, and if you did eat any, whether or not you saw it before it was cooked.

To the second cross-interrogatory he saith: I know it was composed of fresh beef from personal inspection and from eating of some of it. I saw the cargo of steamship Francis Wright on the first day of her arrival at the port of Key West, in November, 1872. I was on board and saw it cut off—a quarter of beef of the cargo—and received it therefrom. I ate of said beef at my residence in Key West; the piece of beef received by me was about ten pounds. It was cooked at my residence; I carried the beef to my house and into the kitchen to be cooked.

Third cross-interrogatory. If, in answer to the fifth direct interrogatory, you shall say that you went on board the Francis Wright and inspected her cargo, or any part thereof, then state particularly and in detail the number of times you went on board of said vessel, how soon after her arrival at Key West you first went aboard, how soon before her departure therefrom you last went aboard, the dates that you so went aboard, whether alone or in company with any other person or persons, the name or names of the person or persons, how much of the cargo of the Francis Wright you ever inspected, in what part of the vessel the same was situated, at whose request you inspected the same, and how you made such inspection; state also in detail what you did in making such inspection.

To the third cross interrogatory he saith: I was on board the steamship Francis Wright but once, which was on the day of her arrival in the port of Key West, in November, 1872; I cannot now remember the exact day of the month; I think James W. Lock, judge of the United States district court for the southern district of Florida, was with me; I inspected that portion of the cargo situated between decks; the captain of the ship, whose name I do not remember, requested me to inspect said cargo; my inspection consisted in examining the general condition and appearance of said beef.

262 Fourth cross-interrogatory. Is it not the fact that all you know about the beef inquired of, that you in company with some others ate of some beef at the hotel while the Francis Wright was in port, and that you were informed that the said beef had been part of the

cargo of the Francis Wright? If this is not the fact, state in what respect or particular it is not the fact, and what other knowledge or information you had about the beef different from that above stated.

To the fourth cross interrogatory he saith: I ate none of the beef at the hotel, and my knowledge of the cargo of the beef and its condition was arrived at from personal inspection of the cargo of beef on board of steamship Francis Wright between decks, and in person obtaining a piece on board, taking it to my residence and eating thereof.

Fifth cross-interrogatory. Have you received any communications, written or oral, from any person relating to said beef? If yea, and such communications were oral, state particularly all that was said, and if in writing, annex copies thereof and your answers thereto.

To the fifth cross-interrogatory he saith: In July last past I had a conversation with Mr. Zane on the subject-matter of the cargo of the Francis Wright, to whom I gave a written statement of facts substantially the same as hereinbefore deposed to; I also received a written communication from Benedict, Taft & Benedict, 64 Wall street, New York, which is signed me and attached hereto.

Sixth cross-interrogatory. Do you know any other matters or thing that would be of benefit or advantage to the claimants and respondents? If so, state the same fully and in detail, as if particularly interrogated thereto.

263 To the sixth cross-interrogatory he saith, he knoweth not.

ROBERT J. PERRY.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 19th day of October, 1874, before—

WINER BETHEL,
Commissioner.

LAW OFFICE OF BENEDICT, TAFT & BENEDICT,
No. 64 WALL STREET,
New York, August 6, 1874.

DR. R. J. PERRY:

DEAR SIR: In reference to the cargo of beef on the Francis Wright, as to which Mr. Zane recently called on you, we desire to take the evidence of yourself and other witnesses, and at Mr. Zane's suggestion we write to you to request you to send us the name of some person fit to be named as a commissioner to take the evidence. We should prefer a lawyer, if any such there is, whom you can recommend, otherwise an intelligent man of business.

Mr. Zane said that you told him you might learn of other witnesses to the condition of the beef. If you can, at the same time, write to us the names of any such, you will much oblige,

Yours, &c.,

BENEDICT, TAFT & BENEDICT.

CHARLES TIFT.

First interrogatory. What is your name, age, occupation, and where do you reside?

To the first interrogatory he saith: My name is Charles Tift; age, fifty-five years and upwards; a commission merchant; residence, city of Key West.

264 Second interrogatory. Do you know the parties above named, or any of them? If yea, which of them, and how long have you known them?

To the second interrogatory he saith: I do not know Jacob M. Duncan or Simon Poey, or any of the parties to this suit personally.

Third interrogatory. Were you at Key West in the month of November, 1872? If you say that you were, state if you remember the steamship Francis Wright arriving at that port, and state if you know what her cargo was composed of.

To the third interrogatory he saith: I was at Key West in the month of November, 1872. The steamer Francis Wright arrived at Key West in the month of November, 1872. Her cargo was composed of fresh beef, preserved by Bray's patent process.

Fourth interrogatory. If, in answer to the third interrogatory, you shall say that the cargo of the Francis Wright was composed of fresh beef, state if you saw or ate of that beef; and if yea, state particularly and in detail what the condition and quality of the same was; how much of said beef did you receive? Did you test the condition by cooking or eating?

To the fourth interrogatory he saith: I was presented with some forty or fifty pounds of the fresh beef of the cargo of the steamship Francis Wright, by Capt. Henry Dennison, who was on said steamship at the time; I ate of the same at my residence where it was cooked; the beef was perfectly sweet and sound.

Fifth interrogatory. Did you go on board the Francis Wright; and if so, did you inspect her cargo or any part thereof? If yea, state particularly and in detail what examination of the cargo you made, and when you made it, with reference to the arrival of the vessel at and her
265 departure from Key West; state particularly and in detail the condition of the said cargo.

To the fifth interrogatory he saith: I went on board of the steamship Francis Wright, on the 14th day of November, 1872, and examined her cargo sufficiently as to its condition to satisfy me of its soundness, and became satisfied that it was sound and in good condition.

Sixth interrogatory. Do you know any other matter or thing that would be of benefit or advantage to the libellants and appellants? If so, state the same fully and particularly.

To the sixth interrogatory he saith, he knoweth not.

Cross examination:

First cross-interrogatory. Were you in the employ of the libellants herein or either of them during the year 1872, and are you now in their employ or connected with them in business in any way? If so, state the connection particularly and in detail.

To the first cross interrogatory he saith: I was not in the employ of the libellants herein named, or either of them, during the year 1872, or connected with them, nor am I now, nor have I been at any time.

Second cross-interrogatory. If, in answer to the third direct interrogatory, you shall say that the cargo of the Francis Wright was composed of fresh beef, and in answer to the fourth interrogatory that you saw or ate of that beef, then state how you know that the said cargo was composed of fresh beef, the facts and circumstances under which it came to your knowledge, when and where you first saw any of that cargo; state particularly and in detail how you know that the beef you either ate or received was any part of the cargo of the said Francis Wright, and how much of the said beef you ate, where you ate it, and if you did eat any, whether or not you saw it before it was cooked.

266 To the second cross interrogatory he saith: I was on board of the vessel and saw that her cargo was composed of fresh beef

so far as I could see, and the beef presented to me was taken from her hold—the beef presented to me by Capt. Dennison as testified to in the fourth direct interrogatory, a portion of which was eaten by myself and family, and cooked at my residence; I saw the cargo on or about the 14th day of November, 1872, and I think it was on that day I was presented with the beef as before testified to; I ate of the beef presented to me by Capt. Dennison at various meals for two or three days, and I am certain it was a portion of the cargo of said steamship Francis Wright.

Third cross-interrogatory. If, in answer to the fifth direct interrogatory, you shall say that you went on board the Francis Wright, and inspected her cargo or any part thereof, then state particularly and in detail the number of times you went on board of said vessel, how soon after her arrival at Key West you first went aboard, how soon before her departure therefrom you last went aboard, the dates that you so went aboard, whether alone or in company with any other person or persons, the name or names of the person or persons, how much of the cargo of the Francis Wright you ever inspected, in what part of the vessel the same was situated, at whose request you inspected the same, and how you made such inspection; state also in detail what you did in making such inspection.

To the third cross-interrogatory he saith: I went on board of the steamship Francis Wright upon her arrival at Key West; I do not remember the date; I cannot state how often I went on board of said steamship, but did go on board of her on the 14th of November, 1872; I do not remember that any persons went on board of the steamship Francis Wright with me at any time, but the officers and other persons attached to said steamship; I looked through a door or hatch, and by the aid of a lantern could see a sufficient portion of her
267 cargo, which was in good order (to satisfy me of the perfect soundness of the whole); I inspected the cargo of said steamship at the request of Capt. Henry Dennison, who was then on board, and, as I understood, representing the ownership of the cargo on board.

Fourth cross-interrogatory. Is it not the fact, that all you know about the beef inquired of is, that you, in company with some others, ate of some beef at the hotel, while the Francis Wright was in port, and that you were informed that the said beef had been part of the cargo of the Francis Wright? If this is not the fact, state in what respect or particular it is not the fact, and what other knowledge or information you had about the beef different from that above stated.

To the fourth cross-interrogatory he saith: I ate none of the beef of the cargo of the steamship Francis Wright at the hotel, but at my own house as previously testified to.

Fifth cross-interrogatory. Have you received any communications, written or oral, from any person relating to said beef? If yea, and such communications were oral, state particularly all that was said, and, if in writing, annex copies thereof and your answers thereto.

To the fifth cross-interrogatory he saith: I have received no written communications from any one relating to said beef, so far as I can remember; I may have had conversations (oral) with third parties about the beef distributed at Key West, from the steamship Francis Wright, but cannot remember the particulars.

Sixth cross-interrogatory. Do you know any other matters or thing that would be of benefit or advantage to the claimants and respondents? If so, state the same fully and in detail, as if particularly interrogated thereto.

268 To the fifth cross-interrogatory he saith, he knoweth not.

CHARLES TIFT.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 19th day of October, 1874, before

WINER BETHEL,
Commissioner.

STEPHEN M. BALDWIN.

The direct interrogatories are the same as those above.

To the first interrogatory he saith: My name is Stephen M. Baldwin; aged 27 years and upwards; occupation, a bookkeeper; reside in the city of Key West.

To the second interrogatory he saith: I have no personal acquaintance with any of the parties above named in this suit.

To the third interrogatory he saith: I was in Key West in the month of November, 1872; the steamship Francis Wright arrived at Key West in November, 1872; I cannot say, of my own knowledge, of what her cargo was composed of, but saw the hind quarter of a beef brought from said steamship to the ice bench of A. F. & C. Tift, two pieces cut therefrom, the one given to deponent and the other to Joseph B. Brown.

To the fourth interrogatory he saith: I saw and ate of a portion of a quarter of beef landed from the steamship Francis Wright; the said beef was sweet and sound and in good condition; I received about eight pounds of said beef; I tested the condition of said beef by having it cooked at my residence and eating of it.

To the fifth interrogatory, he saith: I did not go on board of the steamship Francis Wright, nor did I inspect her cargo, to my knowledge.

269 To the sixth interrogatory, he saith: He knoweth not.

Cross-examination:

The cross-interrogatories are the same as those above.

To the first cross-interrogatory, he saith: I was not in the employ of the libellants herein, or either of them, during the year 1872, nor am I now in their employ or connected with them in any way in business.

To the second cross-interrogatory, he saith: I cannot state positively what the cargo of the steamship Francis Wright was composed of, but, as before stated, I saw a quarter of a beef brought from on board of her to the ice table of A. F. & C. Tift, from which I received a piece of about eight pounds; I think I received this beef on the morning of the th of November, 1872; I only judge the beef I received was a part of the cargo of the steamship Francis Wright by seeing the quarter before testified to come from her, and it was beef that had been preserved by ice; I saw the beef given me before it was sent to my residence or cooked.

To the third cross interrogatory he saith: I have no knowledge of going on board of the steamship Francis Wright, nor did I in any manner inspect her cargo.

To the fourth cross-interrogatory he saith: I ate of none of the beef referred to at the hotel, nor do I know that any of said beef was at the hotel. I *I* have no further knowledge or information about the cargo of the steamship Francis Wright personally than what I have already testified to.

To the fifth cross-interrogatory he saith: I had about three months ago an oral conversation with a Mr. Zane, and gave him a written state-

ment that I had eaten a piece of the beef landed from the steamship Francis Wright, and found it sound and sweet, not knowing at
270 the time of any litigation. I have had no written communications from any person relating to said beef.

To the sixth cross-interrogatory he saith, he knoweth not.

STEPHEN M. BALDWIN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 19th day of October, 1874, before

WINER BETHEL,
Commissioner.

JOSEPH B. BROWN.

The direct interrogatories are the same as the above.

To the first interrogatory he saith: My name is Joseph B. Brown; age, fifty-one and upward; occupation, a merchant; resides at Key West.

To the second interrogatory he saith: I do not know the parties above named, litigants in this suit.

To the third interrogatory he saith: I was in Key West in the month of November, 1872. I think the steamship Francis Wright arrived at Key West some time in the month of November, 1872, but cannot say positively. I do not know, of my own knowledge, what her cargo was composed of. I saw some fresh beef come from on board of her.

To the fourth interrogatory he saith: I saw beef come on shore from the steamship Francis Wright in a boat. I obtained a piece of it, about thirteen pounds; it was sent to my residence, there cooked and I ate of it. It was fresh, sound and perfectly sweet.

To the fifth interrogatory he saith: I did not go on board of the steamship Francis Wright, nor did I inspect her cargo.

To the sixth interrogatory he saith, he knoweth not.

Cross examination:

The cross-interrogatories are the same as those above.

271 To the first cross-interrogatory he saith: I have never been in the employ of the libellants herein named, nor have I had any connection at any time with them.

To the second cross interrogatory he saith: I do not know if the cargo of the steamship Francis Wright was composed of fresh beef. I saw a boat come on shore from said steamship to the wharf of A. F. & C. Tift, having in her a quarter of iced beef. I procured 13 pounds or thereabouts from said quarter, sent it to my residence, had it cooked and ate of it. I had sent no other beef home that day.

To the third cross-interrogatory he saith: I never went on board of the steamship Francis Wright, and did not inspect her cargo.

To the fourth cross-interrogatory he saith: I never ate at the hotel during the time the Francis Wright was in Key West, or at said hotel ate of any of the beef from her.

To the fifth cross interrogatory he saith: I had a conversation (oral) with a Mr. Zane in reference to the condition of the beef, and I gave him a written statement to the effect that the piece of beef I received I ate of, and it was sound and good. I have had no written communications from any person in reference to the cargo of the steamship Francis Wright.

To the sixth cross-interrogatory he saith, he knoweth not.

J. B. BROWN.

Examination taken. reduced to writing and by the witness subscribed and sworn to, this 20th day of October, 1874, before

WINER BETHEL,
Commissioner.

ALFRED W. COLLINS.

The direct interrogatories are the same as those above.

272 To the first interrogatory he saith: My name is Alfred W. Collins; aged 32 years and upwards; occupation, a drayman; resides in the city of Key West.

To the second interrogatory he saith: I do not know the parties above named, or either of them.

To the third interrogatory he saith: I was in Key West in the month of November, 1872. The steamship Francis Wright arrived at the port of Key West in the month of November, 1872. Her cargo was composed of fresh beef, preserved with ice.

To the fourth interrogatory he saith: At the time of the arrival of the steamship Francis Wright at Key West, as before stated, I was employed at the Russell House Hotel, in Key West; I went on board of the steamship Francis Wright to obtain a quarter of beef (of her cargo) for said hotel; at that time I went in her hold and saw that she was loaded with fresh beef, which appeared to be in quarters. I obtained a quarter of said beef from her cargo for said hotel, brought it on shore, and took it to said hotel; I there cut it up in parts and placed it on ice, and each day (so long as it lasted) I issued it to the steward of said hotel, to be cooked for the use of said hotel; I ate of said beef at the hotel daily, so long as it lasted. The beef was sound, sweet, and in good order when I got it from the said steamship, and continued so until it was all consumed at said hotel; I tested the condition of said beef by eating it.

To the fifth interrogatory he saith: I went on board of the Francis Wright, went in her hold, and there saw her cargo forward; it looked sound and in good order; I did not particularly inspect it, but observed closely, and smelling it as I walked around where the beef was, forward of the hatch; in this way I found it to be sound. This examination was made on the day of the arrival of the steamship Francis Wright in the port of Key West.

To the sixth interrogatory he saith: He knoweth not.

273 Cross-examination:

The cross-interrogatories are the same as those above.

To the first cross interrogatory he saith: I was not in the employ of the libellants herein named, or either of them, in the year 1872, and am not now; nor am I connected with them in business in any manner.

To the second cross-interrogatory he saith: I was on board of the Francis Wright, and saw that her cargo was composed of fresh beef; I went into the hold of said steamer and saw the nature of the cargo. This was on the first day of her arrival in Key West; I, on the day of her arrival, went on board of her to obtain a quarter of beef of her cargo for the Russell Hotel; I obtained said quarter, brought it on shore, and at said hotel cut it up and placed it upon ice, and issued it daily (so long as it lasted) to the steward thereof, to be cooked for the said hotel, and I ate of the same daily at said hotel; I, on several issues, saw it in the kitchen of the hotel before it was cooked; I marketed for the hotel, and as long as said beef lasted there was no other beef purchased or supplied for said hotel.

To the third cross-interrogatory he saith: I went on board of the steamship Francis Wright but once; this was on the first day of her arrival at Key West; I do not remember the date or day of month I went on board; it was in November, 1872; I went on board of said steamship alone; I did not particularly inspect the cargo, but as walking through the cargo of the ship, forward of the hatch, I smelt portions thereof and found it sound, sweet, and in good order. I was asked below by some one to go below and see how the beef was arranged; cannot remember who it was; I was not asked to inspect the cargo.

To the fourth cross-interrogatory he saith: I ate of the beef inquired of at the hotel; I took said beef from on board of said steamship to
274 the hotel, served it out to the steward thereof (so long as it lasted) daily, and ate thereof daily so long as it lasted. My knowledge and information about said beef was derived from going on board the steamship, seeing what her cargo consisted of, and bringing a portion thereof on shore to the hotel, eating of the same.

To the fifth cross-interrogatory he saith: I have received no communications (written) relating to said beef; there was a person some two or three months ago (whose name I do not remember) in Key West, who was on board of the Francis Wright when she arrived at this port, who I told that the beef obtained for the hotel from the cargo of said steamship was sound, sweet, and good.

To the sixth cross-interrogatory he saith: He knoweth not.

his
ALFRED W. + COLLINS.
mark.

Examination taken, reduced to writing, and by the witness subscribed by the making of his cross and sworn to this 20th day of October, 1874, before

WINER BETHEL,
Commissioner.

EDWARD B. RAWSON.

The direct interrogatories are the same as those above.

To the first interrogatory he saith: My name is Edward B. Rawson; aged forty years and upwards; by occupation, a merchant; I reside in the city of Key West.

To the second interrogatory he saith: I do not know the parties above named, or either of them.

To the third interrogatory he saith: I was in Key West in the month of November, 1872; I remember of the steamship Francis Wright
275 being in the port of Key West in November, 1872; I do not know, of my own knowledge, what her cargo was composed of; I heard it was of beef.

To the fourth interrogatory he saith: I ate of beef at the Russell House Hotel said to have come from and being a part of the cargo of the steamship Francis Wright; what I ate of said beef was sound, sweet, and good; I was a boarder at said hotel, and ate of said beef several times.

To the fifth interrogatory he saith: I did not go on board of the Francis Wright, to my recollection.

To the sixth interrogatory he saith: He knoweth not.

Cross-examined:

The cross-interrogatories as those above.

To the first cross-interrogatory he saith: I was not in the employ of the libellants herein named in the year 1872; am not now, nor am I

now, or at any time have been connected with them in business in any way.

To the second cross interrogatory he saith: I only know that the cargo of the steamship Francis Wright was composed of fresh beef, from being told so by an officer of said steamship; I saw a quarter of beef that was brought to the Russell House Hotel by one Alfred W. Collins, then in the employ of the hotel, who at the time said it came from the cargo of the steamship Francis Wright; I first saw said beef at the hotel; I ate of the beef said to come from the Francis Wright three or four times at the Russell House Hotel, where I boarded; I saw said beef before it was cooked.

To the third cross interrogatory he saith: I do not recollect going on board of the steamship Francis Wright, nor did I inspect her cargo.

To the fourth cross-interrogatory he saith: I ate of the beef at the hotel at the suggestion of Mr. William A. Russell, the proprietor,
276 who said that it came from the cargo of the steamship Francis Wright, and that he wanted to have the quality of the same tested; I saw the beef brought to the hotel by Alfred W. Collins, as before testified; I did not see it cooked.

To the fifth cross-interrogatory, he saith: I have not received any communications, written or verbal, from any person, relating to said beef.

To the sixth cross-interrogatory he saith, he knoweth not.

EDW'D B. RAWSON.

Examination reduced to writing, and by the witness subscribed and sworn to, this 20th day of October, 1874, before

WINER BETHEL,
Commissioner.

OSCAR J. PARKER.

The direct interrogatories are the same as those above.

To the first interrogatory, he saith: My name is Oscar J. Parker, aged forty-three years and upwards; my occupation, proprietor of the St. James Hotel at Key West. I reside in the city of Key West.

To the second interrogatory, he saith: I do not know the parties above named, or either of them.

To the third interrogatory, he saith: I was in Key West in the month of November, 1872. The steamship Francis Wright arrived at the port of Key West in November, 1872; I do not know, of my own knowledge, what her cargo was composed of.

To the fourth interrogatory, he saith: I saw and ate of beef at the Russell House Hotel, where I boarded, which was reported to me came from the cargo of the steamship Francis Wright. I considered the beef I ate of some three or four times, sound, sweet, and of good quality.

To the fifth interrogatory, he saith: I went on board of the steamship Francis Wright immediately on her arrival, but did not ex-
277 amine her cargo; was told, on board of her, by Captain Huggins and Captain Dennison, that her cargo consisted of fresh beef preserved with ice.

To the sixth interrogatory he saith, he knoweth not.

Cross-examined:

The cross-interrogatories are the same as those above.

To the first cross-interrogatory, he saith: I was not in the employ of

the libellants herein named, or either of them, in the year 1872, nor connected with them in business, nor am I now in their employ, or connected with them now.

To the second cross-interrogatory, he saith: I do not know that the cargo of the Francis Wright was composed of fresh beef, except by hearsay; I only know from third parties that the beef I ate at the hotel was a part of the cargo of the Francis Wright.

To the third cross-interrogatory, he saith: I went on board once, but did not inspect the cargo of the steamship Francis Wright; no one went on board with me that I remember.

To the fourth cross-interrogatory, he saith that all he knows of the beef in question is that, as a boarder at the hotel, he ate of beef said to come from the cargo of the steamship Francis Wright.

To the fifth cross interrogatory, he saith: I have received no communications, written or oral, from any person, relating to said beef.

To the sixth cross interrogatory he saith, he knoweth not.

O. J. PARKER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 20th day of October, 1874, before

WINER BETHEL,
Commissioner.

JOHN H. GREGORY.

The direct interrogatories are the same as those above.

278 To the first interrogatory he saith: My name is John H. Gregory; my age 31 years and upwards; occupation, a merchant; I reside in the city of Key West.

To the second interrogatory he saith: I do not know the parties above named, or either of them.

To the third interrogatory he saith: I was at Key West in the month of November, 1872; I remember that the steamship Francis Wright arrived at Key West in November, 1872; I think her cargo consisted of fresh beef preserved with ice, because I saw beef come out of hold after her hatch was opened.

To the fourth interorgatory he saith: I saw and ate of the beef I saw come out of the Francis Wright, as testified to in the third interrogatory hereof; I supplied ships in the harbor of Key West with some of said beef; I purchased from fifty to one hundred pounds of said beef. The beef I purchased, as aforesaid, was good, sound and sweet; the beef supplied the ships as aforesaid, no complaints were made against it; I tested the quality of said beef by eating of it.

To the fifth interrogatory he saith: I went on board of the steamship Francis Wright on the first day of her arrival at Key West, which was the only time I was on board of her; hearing that her cargo consisted of beef, I went on board to purchase some if possible; I did purchase some. I did not inspect her cargo, but that portion that I saw under deck appeared to be in good order and similar to that I purchased.

To the sixth interrogatory he saith he knoweth not.

Cross-examined:

The cross-interrogatories are the same as those above.

To the first cross-interrogatory he saith: I have never been in the employ of the libellants herein named, am not now, nor am I connected with them in business in any way.

279 To the second cross-interrogatory he saith: I understood that the cargo of the steamship Francis Wright was composed of fresh beef preserved with ice, and I went on board of her for the purpose of making a purchase of some of it; when so on board, her hatch was opened, and I looked through the hatch, under deck, and saw quantities of beef, some of which I purchased, and from that circumstance I presumed her cargo consisted of fresh beef; I first saw the cargo, or parts of it, on board the first day of her arrival; I know that the beef I received and ate of was a part of the cargo of said steamship, because I received it in person on board, and out of her hold from among the beef I saw there. I ate a portion of said beef at my family residence in Key West; I do not know the quantity I ate; I saw the beef I ate before it was cooked.

To the third cross-interrogatory he saith: I did not inspect the cargo of the steamship Francis Wright; I went on board of the steamship Francis Wright but once, which was the first day of her arrival; Joseph Mickley, of United States Navy, went on board with me.

To the fourth cross interrogatory he saith: I got no information from persons at or from the hotel; my information was acquired from going on board of the steamship Francis Wright for the purpose of purchasing beef when on board; I saw quantities of beef in her hold, forward of her hatch, from which I received from fifty to one hundred pounds; I ate of that I received, and supplied ships of the Navy lying in Key West with portions of it.

To the fifth cross-interrogatory he saith, that a Mr. Zane, some time ago, while in Key West, asked deponent as to the quality of the beef purchased from steamship Francis Wright, and deponent gave said Zane a certificate that said beef was sweet and sound; deponent has not received any written communications from any one on the subject-matter hereof.

280 To the sixth cross-interrogatory he saith he knoweth not.

JOHN H. GREGORY.

Examination taken and reduced to writing, and by the witness subscribed and sworn to this 31st day of October, 1874, before

WINER BETHEL,
Commissioner.

UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss:

Be it remembered, that on this 15th day of April, in the year of our Lord one thousand eight hundred and seventy-five, I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office at No. 71 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Simon Poey, to testify and the truth to say on the part and behalf of

the appellants in a certain suit or matter of controversy now pending and undetermined in the circuit court of the United States for the southern district of New York, at New York, on appeal from the district court of said district, wherein Duncan and Simon Poey are libellants and appellants ag'st the steamer Francis Wright, her engine, etc.

281 And thereupon the said SIMON POEY, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Simon Poey, and he did thereupon depose, testify, and say as follows, viz:

I am 26 years of age.

(The counsel for respondent objects to the examination of witness, as the circuit is now open.)

I am one of the libellants in action; I was examined as a witness on the trial; I recollect a conversation with Mr. Rudd before the chartering of the Francis Wright.

Q. Was anything said in that conversation with reference to the speed of the vessel?

(Objected to on the ground that the charter party contains the contract, and is the best evidence.)

A. Yes. (Taken subject to objection.)

Q. What was it?

(Same objection.)

A. He said she would go nine miles an hour—that she had made ten, and added, this is just the ship you want.

Q. When was this conversation with reference to the execution of the charter?

A. It was the day of the execution of the charter, and before the charter was signed; the charter was executed at that same interview.

Q. Had you or not said anything to Mr. Rudd as to what the vessel was wanted for?

(Objected to on the ground that it is immaterial and leading.

A. Yes, sir.

Q. What?

(Objected to as incompetent and immaterial.)

282 A. I told him we wanted the vessel to bring fresh meat from Texas to Philadelphia; that we were going to put in a refrigerator, and we required a vessel of ordinary good speed; explained to him the nature of the alterations, the refrigerating building, and obtained his consent.

(Objected to.)

He asked me if there would be any injury done to the vessel. I answered we had to cut a hole through the main deck; beyond that that the vessel would be strengthened, and he gave me his consent.

(Objected to.)

He said all right. I was on board the Francis Wright after she was fitted out for this voyage. I was on board the Fire Fly after she was fitted out.

Q. How many cargoes of fresh beef did the Fire Fly carry?

(Objected to as immaterial.)

A. I know of two. I was not on board of her after she was fitted out for both voyages, but was on board of her after she was fitted out for the last voyage.

Q. What examination, if any, did you make of the refrigerating machine on the Fire Fly?

(Objected to as immaterial and irrelevant.)

A. I made a thorough test of the apparatus.

(Counsel for respondent moves to strike out this answer.)

I went down in the hold, closing up the hatches after me, and having ordered the machinery started——

(Objected to.)

The machinery was started and the ice box was full of ice. I staid there watching the thermometer until I was satisfied that everything worked right.

283 (Objected to, and motion made to strike out the part "until I was satisfied that everything worked right.")

I was there about fifteen minutes, during which time the thermometer fell to thirty-eight degrees from 46. That it was when I first went in.

Q. Did you make any examination of the refrigerating apparatus on the Francis Wright before this voyage in question?

A. Yes, sir.

Q. How did the apparatus on the Francis Wright on this voyage compare with the apparatus on the Fire Fly on the subsequent voyage on which you examined her?

(Objected to as immaterial.)

A. The apparatus was the same on both steamers. They were alike.

Q. Did you know of the loading of the Fire Fly on this voyage referred to?

(Objected to as immaterial.)

A. We loaded her ourselves.

Q. Where was she bound?

A. To Havana.

Q. Do you know when she left Philadelphia?

A. About the 10th of March.

Q. Witness looks at memorandum, and counsel for respondent asks, when did you make that memorandum?

A. I made it yesterday. It has not got the year. Witness resuming, says that it was March 10th, 1873.

Q. On what voyage was the vessel bound?

(Objected to as immaterial.)

A. She was bound to Havana with a cargo of beef and poultry. I went to Havana on the 6th of March, 1873, before the steamer did. I reached Havana on the 11th of the same month, and left there on the 3d of April following. The Fire Fly had not arrived at Havana when I left.

284 Cross-examined:

I had this conversation with Mr. Rudd at my own office. There were present my partner, Mr. Duncan, Mr. Stephen Flanagan, and Mr. Starbuck. My office is at 418 South Delaware avenue, Philadelphia. This was the day the charter party was signed. I think it was the 13th October—I am not positive—in the year 1872. There was no one else present at that interview that I remember. The clerks were in the next room. With the exception of those I have named and the clerks in the next room, I don't remember of any one else being present. Captain Dennison might have been there. I will not swear that no one else was present; I don't remember. I have stated the substance of the conversation with reference to the speed of the steamer. We said a great deal with reference to the speed of the steamer. I have given the substance of it.

Q. Will you swear that you have stated all that was said at that interview with reference to the speed of the steamer?

A. No; I said more.

(Counsel for claimants asks to have the last part of the answer stricken out.)

This interview was in the morning, about ten o'clock, I think. I am confident it was before 12 o'clock. I was examined as a witness on the trial of this case before Judge Blatchford. I don't remember that I signed that charter party, but I think I did. I have read my testimony given before Judge Blatchford since it was given. I read it as soon as the book was sent to me in which it was printed. The book was sent me about a year ago. I read it about six months ago; that is the last time I read it. I went to Cuba on 6th March, 1873. I had intended to go before that day; I had intended to go about a week before that day. I had my passage engaged about a week before; that would be about the 28th February. A very sick child prevented my going. I
285 think Mr. Towner had a subpœna for me about that time to come on to testify before Judge Blatchford. I think he had some document, but I don't remember what it was. I don't remember if I read it. I don't know whether or not it was a subpœna. I think he gave me a paper. He did not give me any money; he offered me money, but I did not take it.

Q. Will you swear that you did not take any money?

A. I can't answer positively, for I don't remember.

Question repeated.

A. I don't remember; I can't swear.

Q. You say you sailed for Cuba on the 6th of March?

A. Yes, sir; I think that was the date.

Q. How long was the Fire Fly loaded before she sailed?

A. I could not say exactly; I was not in Philadelphia when she was loaded.

Q. Then you don't know of your own knowledge who loaded her or how she was loaded?

A. No.

Q. What was your business in the fall and winter of 1872?

A. We were in the Cuba business, shipping and commission business, importing sugars, &c.

Q. Had you ever prior to that time shipped any cargoes of beef or fresh meats to any place?

A. None prior to the Francis Wright; this was my first experience in shipping beef.

Q. And was your first experience as respects any apparatus or means of preserving beef on a voyage?

A. Yes, sir.

Q. Did you know anything of the practical working of the kind of apparatus which was put in the Francis Wright before the execution of the charter party?

A. Yes, sir.

Q. What was this apparatus called?

A. Bray's patent refrigerator.

286 Q. State what you knew of the practical working of this apparatus before the charter party was signed.

A. I saw it working in a warehouse next door to our store, and saw several tests made there.

Q. Is that all you knew about it?

A. Yes, sir; of my own knowledge.

Q. Was you interested in the trip of the Fire Fly when you examined the apparatus on her?

A. Yes, sir.

Q. What is your present business?

A. I am treasurer of a collar company; I am not engaged in shipping beef, and have not been since April, 1873; the trip of the Fire Fly was my last experience in transporting beef. I do not know of my own knowledge that Bray's patent has been used since the trip of the Fire Fly in the transportation of beef. I don't know who owns that patent now; at that time we, Duncan & Poey, had it assigned to us.

Q. Have you sold or disposed of that patent?

A. We did not sell it.

Redirect:

Q. When, if ever, did your interest in that patent cease?

(Objected to as leading.)

A. One year after the Fire Fly's adventure.

Q. How did it terminate?

A. The owner of the patent gave us the exclusive use of it, provided we organized a regular business within the year; we did not organize it, and it therefore went back to him.

Q. Why didn't you organize it?

(Objected to.)

A. Because we could not raise sufficient capital.

Q. Your firm met with a financial difficulty, did it not?

(Objected to.)

287 A. Yes, sir; about the first of April, 1873, while I was in Havana.

Recross:

Q. Did you ever know of the United States and West India Fresh Meat and Fruit Company?

(Objected to.)

A. I have heard of it; I don't know whether it was a corporation; I don't know anything about it at present; I knew of it at the time the contracts were made with the holders of the patent.

Q. Was that the name under which you took this patent on the conditions you have before stated?

A. I don't think it was.

Q. State what you do know about it.

A. I think the patent was given by the holders to us, and not by the company. Captain Dennison had a share in this patent; he was not the sole owner. We never had anything to do with this company that I remember.

Q. Did you know of their using Bray's patent?

A. Not of my own knowledge.

Q. Did they have this patent before you did?

A. If they had it at all, it must have been before. The firm of S. & J. M. Flanagan were interested in this adventure; they were also interested in the adventure of the Fire Fly. Mr. Flanagan is my father-in-law.

Q. And was your backer in your efforts to organize the use of Bray's patent?

A. He was no backer; he simply had an interest the same as my firm had. S. & J. M. Flanagan are not embarrassed financially, nor have they been.

SIMON POEY.

Subscribed and sworn to before me this 15th day of April, 1875.
EDWARD L. OWEN,
U. S. Commissioner.

288 UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss:

Be it remembered that on this 15th day of April, in the year of our Lord one thousand eight hundred and seventy five, I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at No. 71 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Edward W. Wilson, to testify and the truth to say, on the part and behalf of the appellant, in certain suit or matter of controversy now pending and undetermined in the circuit court of the United States for the southern district of New York, at New York, on appeal from the district court of said district, wherein Duncan & Simon Poey are libellants and appellants, vs. The Steamer Francis Wright, her engine, &c.

And thereupon the said EDWARD W. WILSON having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Edward W. Wilson, and he did thereupon depose, testify, and say as follows, viz:

I am 59 years of age, and reside in Philadelphia; I am in the grain commission business; I was in fresh meat business. I was
289 connected with this trip of the Francis Wright; I was interested in it. I took an active part in the management. I went to Galveston, Texas, to purchase cattle; I had very little experience in dealing in beef before that. I was in Galveston when the steamer arrived; I staid there about three weeks. I think I got to Galveston on the 12th of October, and left on the 31st October. I was frequently on board the vessel while being loaded. I was on board of her before she was loaded, after she arrived in Galveston. I had seen her in Philadelphia before; I had been on board of her there. The refrigerating apparatus was then on board of her. I had knowledge of the working of refrigerating apparatus before; I had fitted up rooms at 420 South Delaware avenue, for the purpose of preserving fruits, vegetables, meats, and anything else by this process. I had been working those rooms four months. Mr. Zane was my foreman during that time. I saw the refrigerating apparatus on the Francis Wright, in Philadelphia.

Q. What was its condition?

A. It was perfect in condition; it was so pronounced. It was completed, finished, and working. I examined into the working, and saw how it worked.

Q. State how it worked.

A. It worked well. It was what they called a Root Blower, driven by

a 10 horse engine, forcing the columns of air through an ice-box, *sufficient for a refrigerating purpose.*

(Counsel moves to strike out the words underscored.)

I knew of the previous trip of the Fire Fly. I was on board of her, and ate the beef from her several times. I was also acquainted with the subsequent trip of the Fire Fly.

Q. Who had charge of the apparatus on those two trips?

(Objected to as immaterial.)

A. Mr. Zane.

290 Q. Did you examine the refrigerating apparatus in the Fire Fly on both those trips?

(Objected to as immaterial.)

A. I did not on the first; I did on the second.

Q. State how the apparatus on the Francis Wright compared with the apparatus on the Fire Fly.

(Objected to as immaterial and irrelevant.)

A. They were all the same.

Q. Were you in Havana when the Fire Fly arrived on her trip to Havana?

A. I was. She arrived—I can't tell the day; it was a few days after the first of April. I saw the cargo she brought.

Q. What was its condition?

(Objected to as immaterial and irrelevant.)

A. It was good; first-rate.

Q. Did you send any meat out of that cargo to any persons at Havana, and whom?

(Objected to as immaterial.)

A. We did to a great many—to Mr. John Poey, Mr. Pardo, Mr. Infanta, and a Mr. Hester. I did not send any to the Captain General, but it was sent to him. It was sent to all the principal restaurants there. The cargo was sold there.

Q. Do you know what it brought?

(Objected to.)

A. It brought 16 cents per pound.

Q. When the Francis Wright arrived in Galveston how soon were you on board?

(Objected to.)

A. The same day.

Q. How long after she arrived was the cargo discharged?

(Objected to.)

A. I think it was discharged about the 22d of October.

291 Q. Did you see any cargo on the vessel that had been injured on the passage out?

A. I did.

Q. Do you know where that cargo had been stowed?

A. I don't know.

Q. Were you in the refrigerated room after the outward cargo was discharged?

A. I was. I went to look at the condition of it before shipping the beef.

Q. Describe what its condition was.

A. When I first went down they had just washed out the room to clean it out; I saw them do it. The room was then damp. The blower was started to keep the current of air circulating until it was dried. It would take about 24 hours or more for it dry, before the beef was put in it. I was down there a second time after it was washed out; that

was a short time before the beef was put in. It was in very good condition then. It was sufficiently dry to commence storing. While the beef was being taken on board, I was there present most of the time, as one of the parties interested in the beef. I have been out at the place where the cattle were killed three or four times, nearly every day. I generally went out in the morning. They were slaughtering while I was out there. The slaughter-house was about two and a half miles from the ship. I saw how the beef was stowed on board the cars; it was stored, part of it, by hanging the quarter pieces on slats across the car, and part of it laying on boards, on shelves. I can't tell how many cattle to the car. The cars were brought down to the ship by locomotive; it took about 20 minutes to take the cars to the ship. The cars were generally brought down to the ship in the afternoon—one, two, and one time three cars a day, two cars generally. They always finished the storing from the cars in the afternoon; every day.

Q. Was there ever a car-load of beef brought to the ship that remained over night without being taken on board?

292 A. Not to my knowledge—never.

Q. What proportion of time were you present, while the beef was being taken on board?

A. Most of the time; I was generally superintending it; I was mostly about the hatch where it was lowered down.

Q. What was the condition of the beef when it was stowed in the refrigerated room?

A. It was good. I recollect of one quarter of beef being sent back from the refrigerated room by Mr. Zane; I did not examine that quarter of beef; the butcher examined it after it was sent back.

Q. What did he say, if anything?

(Objected to as immaterial, irrelevant and incompetent.)

A. He said it was good; he said that Mr. Zane did not understand Texas beef; that it was perfect and good.

Q. What, if anything, did he say that the appearance of the beef was due to?

(Objected to as leading.)

A. It was occasioned by two fleshy parts of the beef laying together, and it was not injured in the least; I don't know who else was present when the butcher said this.

Q. What was then done with that piece of beef?

(Objected to as immaterial.)

A. The butcher said, to please Zane he would cut off the portion objected to, and send him the rest; he cut it off and it was lowered in the hold again, and Mr. Zane sent it back again, saying he wanted nothing but what would come to Philadelphia perfect; it was then thrown aside and not put down again.

Q. Was there any other piece of beef that was objected to by any one in your presence put into the refrigerated room?

A. None.

293 Q. Was any of that beef which was put into the refrigerated room fly blown.

A. I did not see it.

Q. Would you have seen it had there been any?

(Objected to.)

A. If I had been present I would have seen it.

Q. Was any of the beef put into the refrigerated room while you were there that was green or fly-blown?

A. There was not.

Q. Did Mr. Sherman say anything to you about the condition of the beef being bad?

(Objected to.)

A. He did not.

Q. Did he say "that beef was bad"?

A. Not in my presence.

Q. Did you say to him "No, it would go"?

A. I had no conversation with him in regard to the beef.

Q. Did you use such words to him or any words to that effect?

(Objected to.)

A. I did not.

Q. Did Mr. Sherman say to you or to any one in your hearing, "My God, you can't preserve that meat home"?

A. I did not hear him.

Q. Did he say any words to that effect?

A. No; not in my hearing.

Q. Do you remember the beef that was stowed on Sunday?

A. We worked on Sunday putting beef in the vessel; I didn't stop any day.

Q. When did the beef that was stowed on Sunday come to the vessel?

A. On Sunday morning.

Q. What was the condition of the beef that was stowed on that day?

A. It was good.

294 Q. Do you recollect of any tongues being brought down to the ship?

A. I do; I recollect of some coming down that were not put on board; that was on Sunday; there was no other occasion than that Sunday to my knowledge; the reason they were not put on board was, they were forgotten until the car was almost discharged; they are very delicate and require to be handled very quickly, and they laid in a pile and soured and were thrown away.

Q. Did you at any time say to Mr. Sherman that you had doubts about keeping the meat, that you could not get the temperature low enough with the apparatus you had?

A. I did not.

Q. Or any words to that effect?

A. No.

Q. Was there any difficulty while the cargo was being taken on board with the running of the blower?

A. No; I don't know that there was, except that sometimes they spoke of the boilers leaking, and they could not get steam; that was all.

(All of the above answer after "I don't know that there was," counsel moves to strike out.)

Q. Did you notice at any time when that was said, anything as to the speed of the blower?

A. No.

Q. Did you notice anything of the temperature?

A. I did not.

Q. Did you at any time while they were loading notice how the blower was running?

A. I did once or twice; I spoke of it and asked Mr. Sherman if the speed of the blower, of which we used to judge very much by listening to it, was sufficient to keep the necessary temperature; I only remember in two instances of doing so; he said it was.

Q. When you say they spoke of not getting steam enough, who do you mean by they?

(Objected to.)

295 A. I mean Mr. Zane, who had charge of the refrigerated department.

Q. Did Mr. Sherman say anything to you about the boilers leaking at any time while they were loading?

A. No; I did to him.

Q. What did you say to him?

A. I asked him if he couldn't stop the leaks in the boiler. They were making plugs for it, he said. Our carpenter and his engineer were making plugs for it at that time.

Q. Do you recollect the width of the belt for the blower?

A. I think a 3½ or 4 inch belt.

Q. Have you been familiar with the running of such belts in similar apparatus to this?

A. Yes.

Q. Have you had the lacing of the belt break?

A. Yes, frequently.

Q. Have you had the holes for the lacings tear out?

A. Yes.

Q. How long is a sufficient time to stop the blower for the purpose of relacing the belt?

(Objected to as incompetent.)

A. An ordinary man would do it in from three to five minutes, I should suppose.

Q. Supposing the holes to have torn out, how long would it take?

A. It would take five minutes longer to cut off the piece and punch the holes.

Q. What was the temperature at Galveston while the Francis Wright was loading?

A. It was different. I suppose from 70 to 80 degrees.

Q. How was the beef lowered into the refrigerated room?

A. Through a trap large enough to admit a quarter of beef—two feet square.

Q. How many quarters lowered at once?

A. Only one.

296 Q. How was this trap closed?

A. It was closed by a door which a boy stood by and closed when the beef went in and opened it for it to be lowered; I suppose that trap was open about a third of the time, so long as they could open it—put the beef down and close it again.

Cross-examined:

Q. What was your interest in this beef adventure?

A. About one-fifth.

Q. It resulted in a loss?

A. Yes.

Q. How much?

A. Very considerable—about $30,000. I paid my share of that loss. I suppose I am a party in interest in this suit.

Q. And one-fifth of any recovery by the libellants in this case would belong to you after the payment of expenses, would it not?

(Objected to.)

A. I suppose it would. I did not see every piece of meat that went into the hold of the Francis Wright.

Q. There was considerable of the meat that went down there that you did not see?

A. Yes; there was some went in that I did not see. I don't know the quantity; I suppose I saw three-quarters of it that went into the ship.

I believe we commenced to take in cargo at Galveston on the 24th, and we ended on the 30th, in the morning. I have not read Mr. Reeder's testimony nor heard it read. I have not read Mr. Sherman's or heard it read. I have heard Mr. Benedict read some portion of Reeder's and some portion of Sherman's. I heard him this morning. Mr. Poey and Zane were present; they did not consult as to the testimony I was to give. I did not tell Mr. Benedict what I would testify to. I told him what I saw and what I knew, but not with view of having him ask me. I don't know what questions lawyers are going to put.

297 I noticed the thermometer in Galveston on the ship. I remember of seeing a thermometer in the outside air in Galveston, but I don't remember the degree of heat. I think I did write a letter to Philadelphia from Galveston; I think not after the meat was in the ship; I know I did not. I think I arrived in Galveston on the 12th of October; I think it was on the 6th I left Philadelphia.

They generally commenced killing the beef very early in the morning; I was not there when they commenced. They endeavored to kill each day what we stowed each day. If there was any left over that was not told us; we did not know it. I won't swear that there was or was not any left over.

I didn't go to the slaughter-house every morning. I got there generally about 9 or 10 o'clock when I did go. When I did go they were generally slaughtering cattle. They were not putting it in the car. They generally got through killing about 9 or 10 o'clock—the time I got there.

At that time there was no meat in the car. After they got through killing they allowed the meat to drain, and cut it down and put it in the cars. They quartered it after they hung it up to drain, and then they put it on the car. I can't tell how long it took to hang up, drain, quarter, and put in the car. I have no judgment about it. I don't know whether it would take an hour. I don't know anything about it. The train would start from Poolville about 11 o'clock sometimes, and sometimes at 1 o'clock. Our beef generally went down by regular train. The schedule time of these trains were about 11½ a. m. and 1 p. m.

Q. What was the exception when you did not send by the regular train?

A. When the 11½ a. m. train was late she would not stop to take the beef, and we would take it down on the freight train at 1 o'clock. I don't know if that freight train was late. I don't know of any occasion when it was late. I didn't keep the time of it.

298 Q. Will you swear that it was not sometimes two and three hours late?

A. I will not swear it.

Q. Did any trains run on Sunday?

A. Not that I know of.

Q. You say the butcher cut off the part of the beef that Zane objected to. Did Zane object to any part of that beef?

A. He objected to the whole quarter, and the butcher said he had cut off what he objected to.

Q. Will you swear that no pieces were put into the hold at any time that were objected to?

A. Not to my knowledge.

Q. Some pieces that were objected to might have been put in and you not know it?

A. Yes; there might have been.

Q. Did you have any conversation with Mr. Sherman about the condition of the beef?

A. I did not.

Q. Are you positive about that?

A. I am positive I had no conversation with him about it.

Q. Who superintended the putting of the beef on the Francis Wright?

A. I was the superintendent myself.

Q. How many Sundays were you there putting in beef?

A. One.

Q. In your direct examination you state you did not stop work on Sundays; do you mean to refer to more than one Sunday?

A. I only meant to say Sunday.

Q. Had you ever superintended the stowing of a cargo to be carried under Bray's patent, or any other process, before?

A. No, sir; this was my first experience.

Q. What had been your business prior to this time?

A. I told you I had my refrigerating rooms at 420 South Delaware avenue; I had then four months before this. And before that I
299 was manufacturing barrels by machinery; with these refrigerating rooms we stowed fruits of various kinds and meats; I am not in that business now; I gave it up when the Fire Fly went out—March, 1873. I was about five years in the manufacturing business of barrels.

Q. Were you ever in any business before you had these refrigerating rooms connected with meats or their preservation?

A. No.

Q. Did you have an interest in Bray's patent?

A. I had.

Q. How long had you this interest before the charter-party was executed?

(Objected to.)

A. About 18 months, I think.

Q. Do you own any interest in Bray's patent now?

A. I do. It is used now not in the transportation of meat; it is used locally; it was last used in the transportation of meats when we went to Havana. We got to work stowing the meat on Sunday morning, in Galveston, on the Francis Wright, about 9 or 10 o'clock—that was the day I saw the sour tongues. I mean by sour tongues that they laid in a pile and smelt sour; they were not putrid. We had doubts about putting them on; we did not doubt about their being good, only they had the sour smell.

Q. Did the sour smell indicate to you that they were good or bad?

A. It indicated to me that I would not risk them.

Question repeated.

A. It indicated that they were growing bad.

Question repeated.

A. I don't know that I can give any other answer than that it indicated to me that they were growing bad.

Q. Did the sour smell indicate to you that they were good?

300 A. I can only answer by qualification. I can't say that they were good or that they were bad.

Question repeated.

A. They were not perfectly good.

Q. Were you subpœnaed to come on here to give your testimony?

A. I received a notice to come on here. I know what a subpœna is. I was not subpœnaed to come on here. I came on here at Mr. Poey's request. I do not know who owned the Fire Fly. I was interested in her cargo on that voyage to Havana.

Q. Did you or your friends charter her?

(Objected to.)

A. Duncan & Poey chartered her. I don't know who they chartered her from; I think from Captain Denniston. I saw the apparatus on the Francis Wright before this voyage. I went and looked and examined it; I saw it work.

Q. Could a man go down on the floor of the refrigerating room of the Francis Wright after the meat was stowed there on the voyage from Galveston to Philadelphia?

A. I do not know. I did not see the last portion go down, or see how full it was. I superintended the putting the meat on board, and Mr. Zane superintended the stowing of the meat in the refrigerated room; I had nothing to do with that. I believe there was some way of going down into the refrigerated room besides through the opening in the hatch, but I don't know anything about it of my own knowledge. I do not think I was present when the charter of the Francis Wright was signed, but I won't swear I was not.

Redirect:

Q. You have said that the trains did not run on Sunday. How was the beef that was stowed on Sunday brought down from the slaughter-house?

A. There was a special engine sent for it.

301 Recross:

Q. What was the name of the railroad running down from Poolville?

A. The Galveston and Houston, I think.

Q. What time was that special engine sent from Galveston?

A. I don't know.

Q. What time did it get to the ship?

A. Between 9 and 10 o'clock.

Q. Had any beef come down from the slaughter-house on Saturday before?

A. I think so, but I will not swear to it.

Q. Was any bill rendered for the use of that special engine?

A. No.

Q. Was you at Poolville at all on that Sunday morning?

A. I was not. I don't know when the beef that came down that Sunday morning was killed.

Re-redirect:

Q. Who paid for bringing down the beef from the slaughter-house?

A. Mr. Pool.

Q. What had he to do with it?

A. Allen & Pool were the ones we bought the beef of.

Q. You say you only know about the killing of the beef as they told you. What did they tell you?

(Objected to.)

A. He (Mr. Pool) told me they killed it late on Saturday afternoon.

EDW'D W. WILSON.

Subscribed and sworn to before me April 15, 1875.

EDWARD L. OWEN,
U. S. Commissioner.

Further examination of witnesses adjourned to April 16th, at 1.30 o'clock p. m.

302 UNITED STATES OF AMERICA,
Southern District of New York;
City, County, and State of New York, ss:

Be it remembered that on this 13th day of May, in the year of our Lord one thousand eight hundred and seventy-five, I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office at No. 71 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, John A. Lockhardt, to testify and the truth to say, on the part and behalf of the appellants in a certain suit or matter of controversy now pending and undetermined in the circuit court of the United States for the southern district of New York, second circuit, at New York, on appeal from the district court of said district, wherein Jacob M. Duncan and another are appellants vs. the steamship Francis Wright, her engine, &c.

And thereupon the said JOHN A. LOCKHARDT, having been by me first cautioned and sworn to testify the truth, the whole truth and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said John A. Lockhardt, and he did thereupon depose, testify, and say as follows, viz:

303 I am 35 years of age; I was examined as a witness on the trial of this cause in the district court; I was the second mate of the Francis Wright on the voyage in question. For eleven months I was second officer of the steamships City of New York and City of Havana, running from New York to Havana, Cuba; we made a round trip in fourteen days, sometimes fifteen, nothing over fifteen.

I assisted in stowing the beef in the hold of the Francis Wright on the voyage in question in this suit; as the meat was put down in the hatchway into the refrigerated room, it was passed aft or forward to wherever I was stowing; then I took it from the man's shoulders, and placed it upon the slats where it was to remain during the voyage; I should certainly think I stowed one-half of the meat, if not two-thirds of it. Sometimes there would be four extra men in the refrigerated room besides Mr. Zane, Mr. Giddings, and myself.

Q. 1. What was the condition of the beef at the time it was stowed in the refrigerated room?

(Objected to.)

A. I should call it good beef—merchantable beef—such as I have seen exposed in markets in different parts of the world.

Q. 2. Was any of that beef at the time it was stowed in the refrigerated room fly-blown?

A. Not any.

Q. 3. Was there any beef that was sent into the refrigerated room that was sent out again?

A. There was; one piece in particular. I looked at that piece of beef; both Mr. Zane and I looked at it, and called it chafed in coming down in the car, and Mr. Zane ordered it out of the hold. It was hooked on and sent up. In a few minutes it was sent back again, and we sent it back again on deck, with orders not to send any of such kind of meat down in the hold, as it was chafed and looked bad.
304 It was not returned again to my knowledge. I don't know of any other piece put down there as to which there was any objection.

Q. 4. Was there any smell of taint about the beef that was put in the refrigerated room?

(Objected to as leading; withdrawn.)

Q. 5. What was the condition of the beef that was put into the refrigerated room as to smell of taint?

(Objected to.)

A. I never smelt any taintish smell about it while we were loading.

Q. 6. From what you have had to do with the beef in loading, could any smell of taint have escaped your notice while loading?

(Objected to.)

A. I don't see how it could. I was handling the meat. I used to see the cars arrive with the meat, and helped push them in alongside the vessel. From two to three cars usually came; once one car came. I remember the beef that was stowed on Sunday. I helped stow it. It came to the ship somewhere between the hours of eight and nine on Sunday morning; I saw it when the locomotive brought the cars down. I helped also to push them alongside the ship. None of the meat that came there to be stowed remained alongside the ship over night, to my recollection. After the vessel left Galveston, the beef was used out of the refrigerated room every day up to the day before we commenced to throw it overboard, and even on that day there were portions of it used. I ate of it. Captain Dennison and the engineers did also; it was eaten of generally.

Q. 7. Was there ever any complaint of the meat that was on the table being bad, before the vessel got to Key West?

A. I never heard of any. The refrigerated room was filled with beef until we could not put any more in; it came to within six or eight inches of the top of the hatchway. By removing the beef, you could get
305 down to the bottom of the hold in that place, but you could not get fore or aft or sideways. There was a place by the ice-box where you could go down to the bottom of the hold. I never went there; I don't think I could. I weighed about 195 pounds. I don't think Mr. Reeder could get down there. I saw the beef that was taken out of the vessel at Key West. Mr. Zane got it out of the refrigerated room. I looked at it as they were getting it ready, and saw it as it was being hoisted up. I furnished the men to hoist it. That piece was taken by Mr. Russell's man, assisted by another man, to the Russell House. I did not see it after *if* left the ship. I saw the other piece that went to the Canandaigua. I passed it into the Canandaigua's boat, which was alongside to receive it.

After it was passed into the boat, the doctor of the Canandaigua ordered

the coxswain to proceed alongside the Canandaigua, and give the meat to the wardroom steward. The boat then proceeded to the Canandaigua.

I have forgotten the doctor's name. I considered the meat good meat which was taken out of the refrigerated room at Key West; so far as I could see, it was good meat. I was not a butcher, but I considered it good meat, and was willing to eat it.

Q. 8. Did the doctor say anything to you about it afterwards?

(Objected to as immaterial and incompetent.)

A. Yes, sir; the next day I saw him and he told me it was very nice meat indeed, better than any they had had while they had been at Key West.

On the passage out from Philadelphia to Galveston, we found some of the cargo damaged; most of the damaged was in the ground tier of the vessel; it was caused by getting wet, by what I call salt water.

After the cargo was out I examined the refrigerated room, washed it out and prepared it to receive the beef; there was *was* no leak in the ceiling, to my knowledge; I examined to see if the ceiling leaked.

306 I remember the place in the deck which was cut for the belt of the blower engine; I saw the blower engine placed before the vessel sailed from Camden.

I saw the place where the blower belt ran, after the blower engine started; I saw it that day; I saw it afterwards during the voyage, possibly two or three times, perhaps more, not less than that.

I never saw any water standing in that place, so that the blower belt ran in the water; I knew of the lacings breaking; I have seen them repairing them.

While I was stowing beef, if there was a stoppage of the blower I would know it, by the stoppage of the sound.

They made a change in the belt after we left Galveston; they put on an India rubber belt there was no stoppage of the blower arising from the breaking of the belt after that, to my knowledge. I had known of its stopping before that on account of the breaking of belt two or three times.

I should think they were five minutes lacing the belts when I saw them.

I recollect on one occasion of the blower's not being run during the night, after we returned to Galveston.

Q. 9. State how it came to be stopped.

A. By the donkey boiler not being able to furnish steam enough as the boiler was salted up. Mr. Sherman wanted to know if Mr. Zane could do without the blower one night, as he wanted to clean the salt out of the donkey boiler; Mr. Zane said that he would rather not have the blower stopped five minutes, but if it was a real necessity he supposed they would have to try it, but to run her as soon as possible in the morning, as early as four o'clock. I remember the breaking down of the boiler after we left Galveston; the first time it was during my watch.

While they were repairing the main boiler I am under the im-

307 pression that there was no steam on the donkey boiler; I don't know, of my own knowledge, that they let the water out of the main boiler; I did not see it.

Q. 10. If they did let it out of the main boiler, where would it go?

(Objected to.)

A. They could let it go overboard under pressure of steam. If the boiler leaked the water would naturally go into the bilge. During the stoppage of the engine at that time the vessel was not pumped in any manner.

Further examination adjourned to the 14th instant, at 9 a. m.

MAY 14TH.

Pursuant to adjournment parties appear.

JOHN A. LOCKHARDT continues on his direct examination:

I was on the Fire Fly on the trip to Havana, with a cargo of fresh beef; I helped sell the beef in Havana; I helped selling it every day except the first two days; the first two days I helped send it up to the butcher's; I helped sell it during eight or ten days.

Q. 11. What was the condition of that beef?

(Objected to as immaterial and incompetent.)

A. Prime order.

Q. 12. How long had it been on board?

(Objected to on same grounds.)

A. We were thirty days from the time the last beef was taken in at Philadelphia until we arrived at Havana.

Q. 13. What is the average rate of flow of the Gulf Stream between the Capes of the Delaware and the west end of Cuba?

(Objected to.)

A. I should set it down at about three knots, right through, some places more and some places less.

308 Q. 14. Other things being equal, what should be the difference in the length of passage of a steamer going from Philadelphia to the Gulf of Mexico and coming back again?

(Objected to.)

A. It should be from two to three days; I was out to the slaughter-house where this beef was killed once, that was the day they first commenced to kill; I saw the first beef killed; I think it was from two and a half to three miles from the ship; I did not come down with any of the beef that day; I came down before it.

Q. 15. How long did it take, on the Sunday when the beef was received, to get it stowed?

A. I don't think we worked over four hours, it might have been more, but I don't think we did; the weather that day was about the same that we had been usually having, warm weather, not very warm.

Q. 16. Describe what the arrangements were for opening and closing the scuttle-hatch while the beef was being received.

A. In one of the ship's hatches we had a square place cut in and a scuttle-hatch fitted to it large enough to admit of a quarter of beef being lowered down through it; as the meat was lowered down a man stood to open the scuttle with one hand and guide the quarter of beef with the other; as soon as it was down it was immediately unhooked by a man there for that purpose, and the scuttle closed.

Cross-examined:

I have no permanent home when I sail out of New York; I live in New York; I am not now attached to any vessel; have not been for over a year; I was last attached to the steamship City of New York; I left her either the 4th or 6th of May a year ago; since then I have been in the Bermudas as a planter; I leased a plantation; I was

309 raising onions; I left there a week ago last Friday; I was not subpœnaed here; since my return I have seen Mr. Zane; he did not write to me at Bermuda; I saw him at Peterson's fruit store, on Delaware avenue, Philadelphia; it was this week, Wednesday; I had not been to New York before that since last September; I came on from Philadelphia on Wednesday and went to Mr. Benedict's office; I went there in company with Mr. Matthews; I saw Mr. Matthews by appoint-

ment for me with him by Mr. Wilson of Philadelphia; I saw Mr. Wilson at Philadelphia; I saw him before I saw Mr. Zane; I believe Mr. Wilson had connection with this beef enterprise; it is the same man I saw in Galveston; I saw him in Philadelphia last Monday. I have seen Mr. Duncan; Mr. Matthews is Mr. Duncan's partner; he is the same Duncan who is libellant here. I arrived in New York on Wednesday of this week; I sailed from Bermuda to Philadelphia. The first man I met after my arrival in Philadelphia who had had anything to do with this beef enterprise was Mr. Wilson; I saw him on Monday at his office; I have been to his office before; I am in the habit of going there daily while in Philadelphia. I went from Bermuda to Philadelphia in the schooner Lady Franklin. I was in Philadelphia before this time—last September, before I went to Bermuda the second time; I had not been there before that for two years last July or August; I think just before I joined the Alexandres; I joined them a year ago last August; I was second officer in their employ. I did not talk this beef matter over with Mr. Wilson when I was in Philadelphia last September; I did not see him at that time; I did not talk this matter over with him on my return on the Fire Fly; I think I was in Philadelphia at that time three weeks or a month, that was in July or August, 1873. Mr. Wilson does not occupy the same office that he did when I saw him in July or August, 1873.

I saw his sign while passing up the river in the schooner; that
310 is the way I knew where his office was; that was Monday morning, about half past five. We arrived from Bermuda about five o'clock in the morning, Monday, May 10th; I saw Mr. Wilson between nine and ten o'clock that morning at his office; I did not find his place accidentally, because I saw where it was in passing up the river; I went there to see Mr. Wilson and Mr. Holmes. I was passing up Delaware avenue, and stepped into Mr. Peterson's to see Zane; I had asked Mr. Wilson where Zane was; I did not ask Mr. Wilson where anybody else was who was on the Francis Wright. Mr. Zane mentioned that he had been on here about this suit.

Q. 17. Did either Mr. Zane or Mr. Wilson tell you anything about this suit, and if so, what did they tell you?

A. Well, they told me they had been on here testifying in this matter again; the substance of the conversation I can't give—I can't begin to give; Zane said he had been on here and testified as to the quality of the beef when taken on board at Galveston and at Key West; I did not tell him what I knew about the beef; I was not asked.

Mr. Wilson asked me about the quality of the beef, and I told him the same as I have testified to here; he asked me if I would call upon Duncan, Matthews & Co., in New York; I had told him I was coming to New York on my way up the Hudson River. I talked a little with Mr. Matthews on my arrival here; he wanted to know if I would go down to Mr. Benedict's office and see him about it.

Nobody has said anything to me about making it all right for the loss of time in giving my testimony. From here I am going to West Stockbridge, Massachusetts. At Key West I could see the cargo by opening the scuttle, that is, the ends of a half dozen quarters.

Q. 18. If you could get down, how much of the cargo could you see?

A. That would depend upon how much daylight there was.
311 The refrigerated room was the same shape as the hull of the ship; I have forgotten the length and width; it was not stowed solid; there was about an inch space left between the quarters as they were placed on the racks. On the Sunday we stowed meat in Galveston we commenced about eight or nine o'clock; it took four or five hours, so

that we got through not later than two o'clock. I ate of the meat every day while it was on the table; I pronounced it good; there was no bad taste about it.

Q. 19. Will you swear that at Key West there was no bad meat in the refrigerated room?

A. So far as my knowledge goes there was not.

Q. 20. State what your knowledge was.

A. I did not see any bad meat; all the meat I saw was good meat; I saw that which went ashore, a quarter; that which went on the Canandaigua, a roasting piece; and that which was used at the table; I don't know how much that was; from my own knowledge I don't know anything about the condition of the rest of the meat; I was not down in the refrigerated room.

Q. 20½. How do you know that the water would run from the boiler into the bilge?

A. A sailor always looks for water to go down into the bilge; that is all I know about it. I have been in the fire-room of the Francis Wright while she was in New York and the night she broke down just outside of Galveston bar; when I speak of the fire room I mean the front end of the boiler; I know I was in the engine room with Mr. Sherman the night the ship broke down outside of Galveston, and I think I went down in the fire-room.

Q. 21. If, at Key West, you had desired to examine the condition of the cargo—of the beef—what would it have been necessary for you to do in order to make that examination?

A. I should have had to send up several quarters of beef on deck, so as to give me a chance to displace others and so work my way through.

312 The refrigerated room was lighted by globe lamps when we were working in it. To examine the entire cargo—every piece of beef—it would be necessary to displace the whole of it, and so work your way through the entire cargo; there were no alley-ways running through it.

Q. 22. In order to make a fair inspection of the condition of beef at Key West, how many pieces would it be necessary, in your judgment, to send on deck?

A. Well, it is hard to say how many you would have to send on deck; you might have to send on deck six quarters, and you might have to send on deck a dozen quarters, and keep on sending a dozen or two more. I went ashore at Key West; I might have been ashore two or three hours; I saw Mr. Tifft aboard the ship; I could not say how long he was aboard; I don't know what he was doing aboard; I don't recollect of any quarters of beef being brought upon deck while he was aboard; I was not on deck all the time he was aboard; I went to my room; I could not tell how long Mr. Tifft was aboard; he might have been there half an hour, and he might have been there only fifteen minutes; he is the same man they bought the ice and coal of. I don't know how many quarters of beef they could pile from the floor of the refrigerated room to the top, but I should think about twenty-five quarters; to get all the way to the bottom you would have to displace six quarters, and to go to the wings of the ship if the lower tier was clear, you would only have to take out the lower tier for a small sized man; that would enable him to crawl to the wing; that would be probably eight quarters to one wing and eight quarters to the other. I think the distance between the slats was fourteen inches. After the man crawled in he could only see the tier above him, and the tier on each side of him; he would have to have a light to do that.

Q. 23. How could he make an examination of the tier next above him?

A. He would have to displace beef; whether he would have to
313 displace the whole tier or not I would not like to say, but it is possible. In working his way up to the ceiling of the refrigerated room, he would have to displace every tier if he wished to examine every tier.

Q. 24. Going back to the floor of the refrigerated room, how would he get an inspection on the next row of quarters but one of the same tier?

A. He would have to haul them towards him; that is, if you mean by inspection examining every inch of beef; he would have to displace every row if he had to inspect them.

Q. 35. How long would it take to inspect that cargo of beef in that way?

A. That is a very difficult question to answer; it would depend upon how many men were working.

Q. 26. Take one man.

A. You are making it worse now; one man would work very slow down there; I could not say how long it would take one man to do it; he could not do it in a day. The India rubber belt was put on the blower somewhere between Key West and Galveston. I have forgotten how many days we were going to Key West, but I think five. I could not tell the day of the month that we left Galveston the second time; we arrived at Key West in the afternoon; it might have been three o'clock; we were in Key West over forty hours; we left there eight or nine o'clock in the morning. I saw Mr. Tifft there the day of our arrival. I don't recollect seeing him on board again. During the stoppage of the steamer off Galveston, I mean to say that she was not pumped, to my knowledge. I heard the donkey pump going on the trip from Galveston to Key West.

Q. 27. Could you see the furnace doors from the deck of the Francis Wright?

A. Yes, sir; I swear to that positively; and I swear that I did so see them.

314 Redirect:

A. When I went to Mr. Wilson's office on Monday last, I had no knowledge that my testimony was desired in this case; I thought this thing was buried. I have seen Zane getting beef out of the refrigerated room for use; he took the beef out of the hatchway from the top tier; first along he used to take out enough for a couple of days and put it in the ice-house; as it was taken out it left more room in the refrigerated room in the top tier.

Q. 28. Would it be necessary, in order to a fair inspection of the beef by a man who could get down by the ice-box in the place you have spoken of, to remove any of the quarters of the beef?

A. From the ice box forward there were very few quarters of beef stowed; it was mostly brisket; from there he possibly might crawl around among the briskets; he might have had to move half a dozen or so.

Q. 29. Would that examination be such as to enable him to give a fair judgment as to the condition of the cargo?

(Objected to as incompetent and immaterial.)

A. That portion of the cargo he could tell whether it was spoilt or not; it would be likely to spoil there if anywhere.

Q. 30. The commissioner has taken down, on your cross-examination, that you should think they could pile about twenty-five quarters from the floor of the refrigerated room to the top; do you mean by that twenty-five quarters one on top of the other?

A. No, sir; the beef was stowed on slats; there were seven tiers of slats, one above another; I think there would be one tier of quarters on a slat, and then above, another tier; no two quarters of beef were piled on top of each other; I am not positive when the new rubber blower belt was put on; there was only one rubber blower belt aboard the ship that I recollect of.

315 I was aboard the Francis Wright before she sailed. I recollect seeing a quantity of wooden plugs brought on board.

Q. 31. How many?

(Objected to as immaterial.)

A. I should think about half a flour barrel.

Q. 32. Describe those plugs.

(Objected to as immaterial.)

A. They are plugs usually used on board of a steamship for plugging tubes.

Q. 33. Where did you see them?

(Objected to as immaterial.)

A. Just at the entrance as you pass down into the fire room on the upper deck.

Q. 34. Did you see who brought them to the ship?

(Objected to as immaterial.)

A. A man brought them down; I don't know his name; I had not seen him aboard the ship before.

Q. 35. Had you known of any orders given for the procuring of such plugs?

(Objected to as immaterial.)

A. I know a man came down on board the ship one day; the watchman said, "Halloa, what are you doing here?" He said, "I came down to measure for them plugs." The watchman hushed him up, and took him away, and they went up the dock together; that was the last I saw of him until I saw the plugs.

Q. 36. Do you know who that man was?

(Objected to as immaterial.)

A. No, sir; I don't know the watchman's name; he was the ship's watchman.

316 Q. 37. How long was this before you saw this barrel of plugs come?

(Objected to as immaterial.)

A. A day or two.

Recross:

Q. 38. How far was this stranger and the watchman from you when they had the conversation?

A. They might have been eight or ten feet.

Q. 39. State all you heard them say, if they said anything besides what you have testified to above?

A. I don't recollect now that I heard anything further; I did not pay much attention to them; I left the ship a few minutes after; I know of a rubber belt being put on, but I am not positive of its being put on before or after we left Galveston, the second time; it was put on before we left Key West.

JOHN A. LOCKARDT.

Subscribed and sworn to before me, May 14th, 1875.

EDWARD L. OWEN,
U. S. Commissioner.

317 *Affidavit of service.*

U. S. circuit court.

JACOB M. DUNCAN ET AL.
against
S. S. FRANCIS WRIGHT, &C.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John J. Beattie, of the said district, being duly sworn, doth depose and say, that he did, on the 8th day of June, in the year one thousand eight hundred and seventy-five, serve Butler Stillman and Hubbard Clmts. Proctors in the above entitled action, with a notice of which the annexed is a copy, by delivering the same to a clerk in charge of their office during their absence therefrom.

JOHN J. BEATTIE.

Sworn to before me this 10th day of June, 187'.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

JACOB M. DUNCAN ET AL.
vs.
S. S. FRANCIS WRIGHT, &C.

Please take notice that James Conners will be examined de bene esse on the part of the appellants in the above cause before me, a commissioner duly appointed by the circuit court of the U. S. for the southern district of New York, under and by virtue of the acts of Congress,
318 in such case made and provided, at my office, 71 Wall street, New York, on the 10th day of June, 1875, at 3 o'clock in the afternoon of that day, at which time and place you are hereby notified to be present and put interrogatories, if you shall think fit.

Dated N. Y., 8 June, 1875.

EDWARD L. OWEN,
U. S. Commissioner Southern District of New York.

UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss:

Be it remembered that on this 10th day of June, in the year of our Lord one thousand eight hundred and seventy-five, I Edward L. Owen, a commissioner duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act, in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,'" passed March 1st, 1817, and an act, entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, number 71 Wall street, in the

city of New York, in the said southern district of New York, in the State aforesaid, James J. Conners, to testify and the truth to say, on the part and behalf of the appellants in a certain suit or matter of controversy, now depending and undetermined, in the circuit court of the United States, for the southern district of New York, at New York, on appeal from the district court of said district, wherein Jacob M.
319 Duncan and another, libellants and appellants, against steamship Francis Wright, her engine, &c.

And the said JAMES J. CONNER, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said James J. Conner, and he did thereupon depose, testify, and say as follows, viz:

I am 26 years of age; I am second steward of the steamship Ontario; I expect to go to sea on the 23d of this month; I remember the Francis Wright; I was steward on her, on the voyage when she took in a cargo of beef at Galveston, bound for Philadelphia; Henry Dennison was captain of her, and the chief engineer was Sherman; the vessel stopped at Key West coming back; she put in there in distress; that is, she needed ice and coal, and I took on some provisions there. She had a cargo of beef on board; we had used some of that beef before we reached Key West, we used it in Key West; we used it after leaving Key West. We continued to use it for about three days after leaving Key West; part of it was thrown overboard before we got to Delaware Breakwater; then the hatches were closed, and we went up to Philadelphia; but the night of the day of our arrival we went down the river and threw the rest overboard. During all the time we used the beef that which we used was good beef; we did not discover that any of it was unfit for use until about three days after we left Key West. While we were in Key West a piece was sent to the Russell House; it was good meat; I got it out of the refrigerating room myself.

JAS. J. CONNOR.

Subscribed and sworn to before me, June 10th, 1875.

EDWARD L. OWEN,
U. S. Commissioner.

320 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act, in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that the said cause is now pending on appeal in the circuit court of the United States for the southern district of New York, second circuit, from the decree of the district court of said district.

I further certify that due notification of the time and place of taking the said deposition, signed by me, was given to the proctors for the appellees, to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit, as appears from said notice, with the proof of service thereof, hereto annexed.

And that on the 10th day of June, in the year of our Lord one thousand eight hundred and seventy five, I was attended by the proctors for the appellants and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statements, and after carefully read-
321 ing the same to the witness he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the court, for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal, this tenth day of June, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the ninety-ninth.

[L. S.]

EDWARD L. OWEN,
United States Commissioner,
Duly appointed by the Circuit Court of the United States,
for the Southern District of New York, in the Second Circuit.

U. S. circuit court.

JACOB M. DUNCAN ET AL.
vs.
THE S. S. FRANCIS WRIGHT, HER ENGINE, &C.

We consent that the deposition of James F. Mathews may be taken on the part of the appellants in the above cause, on the 8th day of July, 1875, at 2 o'clock p. m., at the office of Benedict, Taft & Benedict, 64 Wall street, N. Y., and that when sworn to before a U. S. commissioner, may be read in this cause, and that the same need not be filed, a copy to be furnished to proctors for appellees within ten days after the same is taken.

July 2, 1875.

BUTLER, STILLMAN & HURBARD,
Claimants' Proctors.

322 Deposition of James F. Mathews, a witness produced, sworn and examined pursuant to the annexed stipulation, July 8th, 1875.

U. S. circuit court.

JACOB M. DUNCAN ET AL.
vs.
THE S. S. FRANCIS WRIGHT, HER ENGINE, &C.

JAMES F. MATHEWS, being duly sworn, deposes and says:

I reside in the city of New York. I was in the employ of Duncan &

Poey, at the time of the voyage of the Francis Wright, in the fall of 1872. I was their bookkeeper. I was in Philadelphia when the Francis Wright returned from her voyage to Galveston, and I saw her on her return at Flanagan's wharf, Philadelphia; she arrived at the wharf in the morning; as I was going to the office she was coming up to the wharf. I got on board as soon as she came alongside. I had heard the evening before that the cargo was lost. After I went on board I saw the captain and all the officers; saw Mr. Sherman, the engineer. I had a conversation with him about the voyage.

Q. What did you ask him respecting the voyage?

(Objected to as immaterial and incompetent.)

A. We spoke about the length of the trip.

Q. Did you ask him what had been the difficulty?

(Objected to.)

A. I did.

Q. What did he say in reply?

323 A. He said the damned boilers had gone back on him.

Q. At that time did he receive a letter from Woodhouse & Rudd?

(Objected to.)

A. He received a letter, the envelope of which was marked with their name; it was brought to him by one of the clerks from the office of Duncan & Poey; it was delivered to him in my presence. I don't remember to have seen him read it.

Q. After that letter was delivered to him did you call on him for his log?

(Objected to.)

A. I did.

Q. What answer did he make?

(Objected to.)

A. That he would have it ready shortly, or words to that effect. He then left me on deck. I was on board the ship that morning quite a long time. He, Mr. Sherman, delivered me the log before I left the ship.

Q. Can you say how long after you called for the log it was that he delivered it?

(Objected to as irrelevant and immaterial.)

A. I can't say exactly how long it was. I carried the log to the office. I examined the log immediately after I got to the office.

Q. Did you see any indications in the log of recent alterations?

(Objected to as leading and incompetent.)

A. I saw indications of additions having been made to the log.

Q. Describe the appearance of any indications that you saw, from which you judged that additions had been made.

324 (Objected to as incompetent and immaterial.)

A. The ink in several places was very fresh.

Q. What was the subject as to which such alterations related?

(Objected to as immaterial and incompetent.)

A. The ship's bills.

Q. Were such additions, as you call them, or any of them, marked in your presence, and, if so, by whom?

(Objected to.)

A. They were, by a boy in the office. They were marked with red pencil.

Q. When was that red pencil marking made?

(Objected to.)

A. On the same day I took the log to the office.

Cross-examined:

Q. Are you a partner now of Mr. Duncan or Mr. Poey?

A. I am not now. I was a short time ago a partner of Mr. Duncan. We dissolved partnership some day last week—the first part of the week it must have been.

Q. Who composed that firm besides you and Mr. Duncan?

(Objected to.)

A. Pardo, Infante & Co., of Havana.

Q. Who furnished the capital of the firm of Duncan, Mathews & Co.?

(Objected to.)

A. Pardo, Infante & Co.; neither of the Flanagans furnished any of the capital of that firm. I have repeated the remark that Sherman
325 made about the boilers to Mr. Benedict and Mr. Duncan; I can't say when I repeated it to Mr. Benedict; can't remember whether it was a year ago; it was longer than a week ago; can't remember whether it was six months, or three months, or two months, or one month ago; I suppose it was longer than two weeks ago; don't remember where I repeated it to Mr. Benedict, probably in his office. I can't say positively when I repeated it to Mr. Duncan; I can't tell any more accurately when I repeated it to him than I can when I repeated it to Mr. Benedict; I have heard what Mr. Sherman swore in reference to that remark; I was present at his examination; that examination was held in an office opposite to this; I was, in January, 1873, in Philadelphia, in the employ of Duncan & Poey; I didn't come on to attend the trial of this cause; they didn't ask me. With the exception of about six months I have been in the employ, or connected with one of them in business, ever since.

Redirect:

I repeated the remark that Mr. Sherman made to me, to Mr. Benedict, before Sherman's examination, a day or two before.

JAS. F. MATHEWS.

Sworn to before me this 8th day of July, 1875.

EDWARD L. OWEN,

U. S. Commissioner for the Southern District of New York.

UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this day of , in the year of our Lord one thousand eight hundred and seventy-five, I, , a commissioner duly appointed by the circuit court of the United States
326 for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at 71 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, , to testify, and the truth to say, on the part and behalf of the libellants in a certain suit or matter of controversy now

pending and undetermined in the district court of the United States for the southern district of New York, wherein Duncan and Poey are libellants ag'st The Steamship Francis Wright.

And thereupon the said HORATIO G. ZANE, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Horatio G. Zane, and he did thereupon depose, testify, and say as follows, viz:

I am 37 years of age; I have been examined as a witness in this cause before; I remember the manner in which the place where the blower belt ran round the wheel on the Francis Wright was fixed; the belt was about three and a half inches wide; the place in the deck that was cut for the belt to run round the wheel was about six inches wide and about a foot long, and in the centre about an inch deep; the centre was the deepest place; I went aboard of the Francis Wright at Galveston about three hours after she got to the dock; that night I returned to the hotel; the next morning I returned to the vessel, and after that made her my stopping place. I made an examination of the refrigerating room
327 before the cargo was taken in; a portion of the room was quite damp overhead; I believe that to have been caused by the condensation of warm air on the cold boards above; the ice stored overhead made the boards cold; I examined to see if there was any leak in the ceiling of the refrigerating room; I found no leaks; the room was washed out on a certain Saturday, I forget which; it was just before the cargo was put in; it was before the fan was started; I examined the condition of the room after the fan was started, and before the cargo was put in; it commenced to dry; at the time the cargo began to be put in, its condition was fair; it was not perfectly dry; the ceiling was always the dampest; I don't remember seeing any water in this place cut in the deck where the blower belt ran; sometimes there was dampness or moisture about there; that was caused by the melting of the ice in the ice-house; to get where the blower belt ran, it must have oozed through the lining of the ice-house; sometimes I noticed as much as a quart of water there in and about this hole; sometimes not any.

Q. Suppose the water to have been wiped up with a sponge, how long before it would gather again?

A. From its appearance it would vary very much.

Q. Was there any difficulty in keeping that place dry with a sponge?

A. None whatever.

Q. Did you, at any time, know of any difficulty with the running of the blower by reason of water in that place?

(Objected to as leading.)

A. Yes; there were two or three times, I remember, that the belts had to be taken up on account of their being wet; that is all.

Q. Do you know of the lacings of the belt breaking?

328 A. No; I don't know of any particular occurrence at any particular time; I don't know of any time when the laces broke two or three times in twenty-four hours.

Q. If the blower had been stopped two or three times in twenty-four hours from ten minutes to half an hour each time to mend the belt, would you have known it?

A. Yes; if it had only stopped ten minutes it would have been a matter that I would have taken no concern about; if a half an hour, I should have been on the ground to ascertain the cause, if I had been awake.

Q. What difference would it make whether it was ten minutes or half an hour?

A. If stopped half an hour I should have felt uneasy about it.

Q. Was there anything in the wetting of the blower belt which interfered with the proper working of the apparatus?

A. A little, sometimes.

Q. To what extent, if at all, did that contribute to the ultimate spoiling of the beef?

(Objected to.)

A. Not any; Mr. Sherman did not tell me the meat was bad at Galveston; he did not tell me that we could not get it home, nor any words to that effect; he and I never had any conversation about the condition or quality of the beef while at Galveston; I did not tell him that I knew I could not get it home, and had written home to that effect; I used no such language to him; I had not written home to that effect. I had no such conversation with him on the voyage home from Galveston; I did not tell him on the passage home from Galveston that I had written home that we could not get the meat home safe, or words to that effect. Mr. Sherman did not, while at Galveston, ask me if it would do any harm to stop the blower, that I remember; I do not remember having any conversation with him about stopping the blower. There
329 was no night that I now remember of that the blower was not running by my consent. I can't say whether any of the meat that went into the refrigerated room was fly-blown or not; I saw none. None of the meat that was stowed in the refrigerated room was tainted. In one spot I could get to the floor of the refrigerated room after the cargo was stowed; that was immediately forward of the ice-box. I remember the beef that was stowed on Sunday; I am not positive how many car-loads, but I think only one; I saw that beef when it came to the ship; it came about 10 o'clock in the forenoon; it was brought down by a special locomotive. There was no time when any car-load of beef was allowed to lie all night without being stowed; I recollect one night particularly, when I worked till about 1 in the morning. I do not recollect at any time on the voyage home that Mr. Reeder made an examination into the condition of the beef; Mr. Reeder could not get to the bottom of the room in the place I spoke of; he was too large a man. I selected the beef that was sent on shore at Key West; Mr. Reeder did not select any of it.

Q. How did the beef that was sent on shore there compare as to condition with the rest of the cargo?

(Objected to.)

A. It was all alike.

Cross-examined:

The entrance to the refrigerated room was not locked; it was fastened in the ordinary hatchway style; I was not at that hatchway all the time; I went ashore at Key West; I was ashore at Key West about one-half the time at intervals during the forenoon of the day we left Key West; I was ashore the day we arrived at Key West about two hours, say from 4 to 6; the place where you could get to the floor of the refrigerated room was about 14 inches square; I mean there was a place
330 cut in the ceiling of the refrigerated room, just forward of the ice-box, about 14 inches square; there was a clear space on the floor of the refrigerated room two feet by eight, extending from the floor to the ceiling; we went through this hole down on the ends of the slats the beef was placed on.

Q. If Mr. Reeder had been able to get through the hole could he have told the condition of the beef?

A. I suppose he could. He couldn't see it all; he couldn't see more than twenty or thirty quarters; when I said he could tell the condition of the beef I mean of that which he could see. I weigh about 140 pounds; I am five feet six inches high; I could get through the hole with a great deal of difficulty. On the voyage home I had duties to perform, handling ice, filling ice-box, breaking ice, adding salt when necessary and nothing else; I suppose my duties required about two hours in 24 at intervals, together with the assistance I had.

Q. What was you doing the other twenty-two hours?

A. Eating, sleeping, talking, sometimes looking at the thermometer. I had a room on the ship; it was in the saloon. I slept in that room—went there in the day-time long enough to perform an ordinary toilet. I was around the part of the ship where the beef was nearly all the time when awake. I would sleep six or seven hours at night. Undoubtedly I was away from the part of the ship where the beef was, in the day-time, as much as an hour frequently on the voyage home. Never was employed by Flanagan. I was paid for my services in this matter by Mr. Edward W. Wilson, who was examined yesterday. Since I was examined last I have been a large part of the time employed by R. Evans Peterson, a dealer in foreign and domestic fruits, and an operator of Bray's patent refrigerator. He uses this refrigerator on shore in connection with his business. Previous to engaging in his employ I went to Key West in the employ of Mr. Poey, one of the libellants, and
331 J. W. Coulston, to get letters from different parties to whom I gave beef from the cargo of the Francis Wright. When at Key West they paid me for that service only my expenses and hardly that. They did not agree to pay me anything if this suit was successful. I did not see Judge Bethel while I was there. I don't know such a man. I was in Key West on this business of getting the letters in the latter part of July and first of August, 1874. Before that I was keeping a meat and provision store. I left that business just previous to my starting for Key West. I sold out after my return.

Q. What did you sell out for; how much?

(Objected to.)

A. Can't tell you; I kept no account of it; I got some money.

Q. How much money did you get for your business?

(Objected to.)

I didn't get any money for the business; I didn't sell out the business.

Q. What did you sell out?

A. I sold a portion of the fixtures which was bundlesome and couldn't be stored; I might have got $250 or less; I won't swear I got $100; I won't swear I got $50; I won't swear I got $20; I got some money; I won't swear I got $10; I won't swear I got a dollar, and won't swear that I didn't get a hundred; I consider my memory fair; I got my present position myself.

Q. How much money have you received from Duncan & Poey since this suit was commenced?

A. Not any.

Q. Who paid your expenses here this time?

A. Mr. Wilson (E. W.) bought my ticket and the balance is unpaid as yet; I have been on here from Philadelphia, I think, four times to testify in this case; part of the time I have paid my own expenses; I was never subpœnaed.

332 Q. Was not the agreement to pay you $5 a day and your expenses to go to Key West?

A. No, sir; we had no agreement whatever.

Q. Did you not tell Mr. Reeder that you were to receive that sum per day and your expenses for going to Key West?

A. No, sir; nor no other person. I know J. E. Hoopes; I wrote to him from Galveston. While I was there I think I wrote twice.

Q. Did you not write him that you was afraid you couldn't get the meat home, or words to that effect?

(Objected to.)

A. Not that I remember of.

Q. Will you swear you did not?

A. Yes, sir. I know Mr. Giddings; he was my assistant on board the Francis Wright. I didn't go to Galveston on the steamer.

Redirect:

I never footed up what I sold those fixtures for. The meat that was landed at Key West did not have the light-colored appearance of meat that had been in water. It had no such color. There was not any odor of tainted meat about the ship before she got to Key West, or in the refrigerated room, that was perceptible to my sense of smell. The first that I perceived any such odor was about four days after leaving Key West. My expenses to Key West were paid part by Coulston and part by Poey, part by Mr. Flanagan and part by Mr. Wilson, and part by Mr. Duncan.

H. G. ZANE.

U. S. circuit court.

333 JACOB M. DUNCAN ET AL.
against
THE STEAMSHIP FRANCIS WRIGHT, ETC.

We hereby consent that the deposition of Jacob M. Duncan may be taken at the office of Benedict, Taft & Benedict, No. 64 Wall street, N. Y., on the 4th day of October, 1875, at 10½ o'clock a. m., and that said deposition, when sworn to, may be read on the appeal in this cause the same as if taken under notice subject to all legal objections, except as to the mode of taking. A copy to be furnished the claimants' proctors within ten days after the same is taken.

Dated Sept. 22, 1875.

BUTLER, STILLMAN & HUBBARD,
Proctors for Claimants.

U. S. circuit court.

JACOB M. DUNCAN ET AL.
vs.
THE STEAMSHIP FRANCIS WRIGHT, HER tackle, &c.

JACOB M. DUNCAN, being duly sworn as a witness for the libellants, pursuant to the annexed consent, deposes as follows:

I am one of the libellants in this cause; I am thirty-nine years
334 of age; I know Henry C. Reeder, who was examined as a witness, and I was present when his deposition was taken.

Q. Do you recollect seeing Reeder on the return of the Francis Wright from this voyage to Galveston in question?

A. Yes.

Q. When and where?

A. I first saw him at Mr. Wilson's house, in Philadelphia, and we went out to Germantown together in the cars. I saw him several times after that at our office in Philadelphia for a few minutes. I also saw him at my father's house in Germantown about a week after his return, by appointment.

Q. What was the object of that interview?

A. To have a full talk with him about the voyage of the Francis Wright, as I desired to get full particulars.

Q. Did you converse with him about the condition of the beef when the vessel was at Key West?

A. Yes, sir.

Q. What did he say?

(Objected to.)

A. He said the beef was good at Key West?

Q. Did he speak of having at any time examined the beef at Captain Dennison's request?

(Objected to.)

A. Yes.

Q. What did he say?

(Objected to.)

A. He said that the day before the beef was thrown overboard, Capt. Dennison had requested him to examine the beef, and he did so, and found it was then tainting.

Q. Did he say anything, and if so, what, as to the leaking of the boiler?

(Objected to.)

335 A. He did; he attributed the disaster entirely to the condition of the boiler. He said that he had seen the water running out of the boiler himself.

Q. Did he or not say to you in that conversation that in his opinion the cause of the spoiling of the beef was the leaking of the boiler?

A. He represented that as being wholly the cause.

JACOB M. DUNCAN.

Sworn to before me this 4th day of Oct., 1875.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

Cross examination waived.

336 *Testimony taken on behalf of claimants and appellees.*

Circuit court of the United States for the southern district of New York.

JACOB M. DUNCAN AND OTHERS, LIBELLANTS and appellants,
against
THE STEAMSHIP FRANCIS WRIGHT, HER ENGINES, &c., Humphrey E. Woodhouse, and Joseph Rudd, jr., claimants and appellees.

SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss:

Be it remembered that on this 13th day of October, in the year of our

Lord one thousand eight hundred and seventy-four, I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817,
337 and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me at the office of Benedict, Taft & Benedict, No. 64 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Henry C. Reeder, to testify and the truth to say on the part and behalf of the said claimant and appellee in a certain suit or matter of controversy now pending and undetermined in the circuit court of the United States for the southern district of New York, at New York, on appeal from the district court of said district, wherein Jacob M. Duncan and Simon Poey are libellants and appellants against the steamer Francis Wright, her tackle, &c., Humphrey E. Woodhouse and Joseph Rudd, jr., claimants and appellees.

And thereupon the said HENRY C. REEDER, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Henry C. Reeder, and he did thereupon depose, testify, and say as follows, viz:

I am thirty-six years of age. I was on the Francis Wright when she went from Philadelphia to Galveston in 1872. She went there for a cargo of beef, which she took on board for Philadelphia. I superintended the killing of the cattle and also the loading. The cattle were killed at a place called Poolesville, about three miles from Galveston. They were taken from there to Galveston by cars. The cars came within fifty feet of the steamer at the dock. I should judge they began to kill the cattle at daylight, and continued the killing until the quantity for that day was killed. The cattle were killed and put in the cars quartered. We killed each morning all that we were to send down that day. The cattle were cut in quarters, and the quarters were stood up on the floor of the car against each other until the whole floor of the car was filled. Then we placed slats across the car over this
338 tier, and then placed another tier on top. The cars were box-cars, with sliding doors inside. I had in each end of the car a hole cut through, two feet square, to allow ventilation. I would go out in the morning, sometimes as early as two or three o'clock, to superintend the killing of these cattle, and as soon as it became light the butchers would start to kill them. I judge we finished killing the cattle by eight or nine in the morning. Then they were cut in quarters and carried into the cars, which were on the siding ready for their reception. Then we had to wait for a regular train of cars to come along to hook on to the cars on the siding. The first train was due there about eleven o'clock. There was another train came along there about one o'clock. We did not always take the first train, but when we did, we were only delayed long enough for the train to back down onto the siding. The same was the case of the second train. I should judge we were about an hour getting from Poolesville, after we started, to the

steamer. Sometimes we had one car load and sometimes two. We commenced to unload about one o'clock, and it would take all the afternoon to unload one car, and it would take into the night when we had two cars. I did not superintend the packing of the beef in the refrigerated room. I only superintended getting it on the boat. All the meat that went on the boat passed under my inspection.

1. Q. What was the condition of the beef when it went on board?

A. Some of it was not good when it went on board, but most of it was packed away as good.

2. Q. What do you mean by not good?

A. I mean bad meat, that smelt bad. Some of the quarters of meat that came on board, on one particular day, were pronounced bad and fly-blown.

3. Q. Was any part of that bad beef, shipped on that particular day, packed away in the refrigerated room?

A. Not that I know of.

339 4. Q. What was done with the beef that was bad; did any of it go into the refrigerated room at any time?

A. I don't know of any bad beef going down into the hold of the vessel. What was pronounced bad was thrown over on to the dock.

5. Q. Was there any particular part of the beef too putrid to put on board?

A. Yes, sir.

6. Q. What parts?

A. I could not exactly say, but I think the principal part of the bad beef was hind-quarter beef. The tongues were all bad. We did not attempt to load them at all. I went on the vessel from Galveston to Key West on her home trip.

7. Q. Did you notice whether the meat was good or bad betwen Galveston and Key West?

A. I was in the hold of the vessel when the meat was packed away between Galveston and Key West. I went there at the suggestion of Captain Dennison to see what was the condition of the beef, and I pronounced a portion of the beef bad. I think it was seven days between Galveston and Key West, and this might have been half way that I went into the hold. I mean it was half way between Galveston and Key West.

8. Q. Had you noticed anything about the beef before then?

A. No, sir; I did not.

9. Q. Had Captain Dennison said anything to you about the beef before this?

(Objected to.)

A. No, sir; I don't think he did. I had been down in the refrigerated room before this to look at the temperature of the hold and to see how the meat was keeping. I noticed the temperature as indicated by the thermometer. I had seen it as low as 38°, and I had seen it as high as 65°—over 60°. I don't recollect exactly.

340 10. Q. Was there any odor about your clothes when you came out of that room?

(Withdrawn.)

11. Q. After this occasion, when Captain Dennison requested you to go down and see about the condition of the beef, and before the arrival of the vessel at Key West, did you go into the refrigerated room at different times?

A. Yes, sir.

12. Q. Did you notice the condition of the beef?

A. Yes, sir.

13. Q. What was it?

A. At the different times I went there after Captain Dennison requested me to go, I noticed a mold forming on the beef.

14. Q. How did the beef smell?

A. There was a peculiar kind of smell about the beef which I thought came from dampness.

15. Q. Did it stink?

(Objected to as leading; withdrawn.)

16. Q. What do you mean by a peculiar kind of smell?

A. I had never seen so large a body of meat together before, but it did not smell to me as beef would hung up in a stall.

17. Q. Did it affect your clothing?

A. The men on board of the boat said it did.

(Answer objected to.)

When the vessel arrived at Key West some of the meat was taken out of the refrigerated room; I took it out; Captain Dennison wanted to give some beef to Mr. Russell; there was also a piece of meat taken out to give to the officers of a United States man-of-war, the Canandaigua; there was also a piece of meat for Mr. Tifft; I got it out and they sent people after it.

341 18. Q. What sort of a piece of meat was sent to the Russell House as to quality?

A. It was a hind-quarter of meat; and it was the best one I could find; I trimmed it and put it in a presentable shape and sent it to Mr. Russell; I went to the Russell House after he had the meat cut up, and some pronounced the meat bad, and some pronounced it good; I selected this piece with care: when we got to Key West I found this mold had formed on the meat.

19. Q. Was any part of it putrid?

(Objected to as leading.)

A. I think there was.

20. Have you any doubt of it?

(Same objection.)

A. I have no doubt that some of the pieces smelled; I trimmed off the mold and musty portion of the piece of beef I sent to the Russell House.

21. Q. What was its appearance after it was trimmed?

A. It had an appearance of a piece of meat which had been in water, light color.

22. Q. Was the odor in that refrigerated room, when you went down after this piece of meat, stinking or not?

(Objected to as leading.)

A. It did not smell like sweet meat would smell.

23. Q. When you put this meat on board at Galveston, was any part of it fly-blown?

A. There was meat that came on board fly-blown, but whether it went down in the hold, or not, I can't tell; Mr. Zane was down in the refrigerated room attending to put the beef in; I think he found fault with some of the meat that was sent down to him; he called out to me not to have any more of that kind of beef lowered down; said he,

"Don't send down any more of that stinking beef," and ordered

342 the men that were taking it off of the hooks not to unhook any more; I heard Mr. Zane say to Captain Dennison that he would have to have more ice [captain said we have been to too much expense now, and I am afraid our people in Philadelphia will not be satis-

fied, or something to that effect, and I will not order this ice without you give me a written order].

(Part in brackets objected to.)

Mr. Zane gave him an order for twenty tons, and Captain Dennison got the ice and had it put on board.

24. Q. Was the condition of the beef a matter of remark on board the vessel from Galveston to Key West.

(Objected to.)

A. Yes, sir; it was.

25. Q. Did you hear any general expression of opinion by these on board?

(Objected to.)

A. Well, I have heard several conversations in regard to the beef at that time.

26. Q. Well, what was the general opinion as to the condition of the beef?

(Objected to.)

A. It was that the meat smelt bad.

27. Q. Did the bad smell of the beef affect the entire vessel?

A. I don't think it did at that time; I am speaking of Key West; there was a difference about that, some said they could smell it, and some said they could not.

28. Q. Was there one car-load of beef at Galveston which lay in the car all night?

A. Yes, sir; I think there were two car-loads killed on a Satur-
343 day and from some cause that I can't recollect, the meat was not put aboard the ship until the next day, Sunday; I can't recollect when we commenced to put that meat on, but I think it was after breakfast, and I think we had to light the lights before we finished at night; during the time we were taking on the cargo of the Francis Wright, for seven days, I should think the temperature was 90° and probably more; I could not say for certain, but I knew it was very warm; while we were loading this beef the hatch-way to the refrigerating room was open.

Cross-examined:

I am now engineering; have been engaged in that business five or six weeks; Mr. Stallman, of Germantown, employed me; I kept no memorandum book on this voyage of the Francis Wright; I went out on her from Philadelphia; I was not employed at all; Mr. Duncan gave me a pass to Galveston and return, but he did not employ me to do anything in relation to the matter, and no one else employed me; what I did in the matter I did as a volunteer; I was examined as a witness on the trial of this cause; I don't recollect how many days I was here attending on that trial; I recollect talking with you (Mr. Benedict) and Mr. Coulston, about the matter; I think I was to Mr. Coulston's office once in Philadelphia; I don't recollect when I was here of Mr. Zane and Capt. Dennison being present at the conversation between myself, you, and Mr. Coulston; I recollect being in your (Mr. Benedict's) office, but who was there, I don't recollect; I came back in the vessel to Philadelphia; after I got back there I went to see Mr. Duncan; I talked with him about the occurrences of the voyage.

29. Q. Did you ever in any of those conversations, either with me, or Mr. Coulston, or Mr. Duncan, state what you have here testified as to the bad condition of the beef?

A. As far as my recollection serves me, I don't think we ever

344 had any conversation in regard to the condition of the beef our conversation was on the condition of the boat.

30. Q. Question repeated.

A. I don't think I ever did; I don't recollect; I may have done it.

31. Q. Did not you in your conversation with Mr. Duncan tell him that you considered the beef good at Key West?

A. I don't recollect ever having had any conversation with Mr. Duncan about the condition of the beef.

32. Q. Will you swear that you did not tell him so?

A. No, sir; I will not. I don't recollect any such conversation.

33. Q. Do you know Messrs. Woodhouse and Rudd?

A. No, sir. I have seen Mr. Rudd; that is, he was pointed out to me when I was here on the trial. I know Mr. Towner here present; this is the second or third time that I have met him.

34. Q. How did you come to be examined as a witness at this time?

A. I came here to see John Sherman, who was engineer of the Francis Wright on this voyage.

35. Q. When did you come to see John Sherman?

A. I came yesterday. I got to Jersey City about twelve o'clock.

36. Q. Was your coming to see Mr. Sherman accidental?

A. No, sir.

37. Q. Why did you come, then?

A. I came to see him in regard to business matters.

38. Q. What business matters?

(Objected to.)

A. I came here to see about getting a job.

39. Q. Had you seen Mr. Sherman before that since the trial of the cause?

A. No, sir.

345 40. Q. Had you heard from him?

A. Yes, sir; he and I correspond.

41. Q. Had you written to Mr. Sherman that you were coming yesterday?

A. No, sir.

42. Q. Had you telegraphed him?

A. No, sir.

43. Q. Did Mr. Sherman know before you saw him that you were coming to New York at this time?

A. He did not know it from me, and as far as I know he did not know it.

44. Q. When did you see Mr. Sherman first yesterday?

A. About quarter after one o'clock, when the steamer Jane Mosely came in.

45. Q. Did you have any conversation with Mr. Sherman in relation to your testimony to be given here?

A. I can't say that we had any conversation about testimony; he and I were talking over last night about the law-suit and beef business.

46. Q. Did any one in New York know that you were to be here at this time until you arrived yesterday?

A. Not that I know of, sir.

47. Q. Have you had any communication with the counsel, or Messrs. Woodhouse & Rudd, or the counsel of the ship since the trial?

A. No, sir. I don't know who their counsel is. If that gentlemen there (pointing to Mr. Stillman) is their counsel, I have had conversation with him.

48. Q. When did you first have any conversation with him?

A. This morning about ten o'clock.

49. Q. Did you go to his office alone?

A. No, sir; Mr. Sherman went with me. I knew this suit was commenced before I came here on the former trial.

50. Q. You understood, did you not, that the suit was brought to recover against this steamer for the loss of this cargo of beef?

346 A. Yes, sir; I heard that. I have been engaged in the beef business last winter. I had never been before this voyage; previous to that I had been civil-engineering.

51. Q. Can you tell how many beeves composed this cargo?

A. I can't tell of my own knowledge; there was said to be three hundred and two head. I did not count them. I can't tell how many composed one car load; as far as my recollection serves me there were two car loads came on Saturday, and those are the ones which were loaded on Sunday. I could not say whether that was the only day that two car loads came down. I had other little matters connected with that day which makes me remember that fact; there might have been some beef taken on board that Saturday. I think those two car loads came down by the train that left Poolesville at one o'clock; that would bring them to the ship about two. I don't recollect whether any of those two car loads were loaded that Saturday. I can't recollect any reason why they shouldn't have commenced unloading the cars that afternoon.

52. Q. You understood, did you not, that the purpose of the voyage was to carry this beef from Galveston to Philadelphia and dispose of it there as fresh beef?

A. Yes, sir.

53. Q. And do you tell me that you, having that understanding, sent on board that ship to be carried to Philadelphia beef that was already spoiled?

A. No, sir. I don't recollect the day of the month we started from Galveston the first time; it strikes me that it was on Thursday; we started the second time on Wednesday or Thursday after the Presidential election. I am not positive we left on Thursday the second time; a great many of the tongues of that beef were brought down to the ship, but the bulk of them were thrown over on the dock; there might have been a few put in the refrigerated room. I think I went into the

347 refrigerated room while we were in Galveston; it was a new thing to me. I went down to see how they were stowing them. I suppose I was in the refrigerated room after the vessel was loaded and while she lay in Galveston. I have a recollection of having been in the refrigerated room after the vessel was stowed in Galveston. I know I was. I went down to see how it was stowed. I went down with Mr. Zane.

54. Q. Did you ever at any time go into that refrigerated room without Mr. Zane?

A. I don't recollect that.

55. Q. Have you any recollection as to the temperature of the refrigerated room after the beef was stowed and before you left Galveston the second time?

A. Yes, sir.

56. Q. What recollection have you as to that?

A. I recollect looking at the temperature and speaking something about it; that it was going up and getting warmer. I misunderstood question 55. I thought you referred to the first time. I don't recollect being down while we were at Galveston the second time.

57. Q. When is the first time that you were in the refrigerated room after you left Galveston the second time that you recollect?

A. I recollect that Captain Dennison came to me and requested me to go down into the refrigerated room. He said to me, "The meat stinks; I can smell it in my room," and I went down and made an examination of the meat. I can't recollect any particular time before that after we left Galveston the second time. I reported what I found about the condition of the beef to Captain Dennison. I don't recollect telling Mr. Zane what I found; probably Mr. Zane was with me. I have no recollection about the date of that time. I have no recollection of Captain Dennison requesting me to examine it more than once.

58. Q. Have you any recollection of any other time that you were in the refrigerated room?

348 A. Yes, sir.

59. Q. When was that?

A. I can't tell the day; I might have been there two or three times in one day.

60. Q. You say you saw the thermometer rating over 60°; when was that?

A. I don't know when that was; it might have been when we had given up all hopes of the meat; that was several days after we left Key West.

61. Q. Then you didn't mean to be understood as saying that you had seen it as high as 65° before you got to Key West?

A. No, sir.

62. Q. You were in the refrigerated room after you left Key West, repeatedly?

A. Yes, sir.

63. Q. Can you tell any particular occasion when the men on board the vessel said your clothing was affected?

A. I can't recollect any particular occasion; I saw the piece of meat that was sent to Russell House after it was there; it was not cooked when I saw it; I don't know that it was cooked afterwards; it was cut up; the conversation between Capt. Dennison and Mr. Zane about ice was at Key West, it was the first day we got there; I was not with Capt. Dennison when the ice was got; I was on the dock when it was weighed; it was brought out of the ice-house, put on the dock and weighed, and then carried over to the ship; there was a hole in the hatch which went into the refrigerated room, the hole was large enough to allow a quarter of beef to go through; that hole had a slide; I was on deck while the beef was being put on board, and I had charge of lowering it through this hole.

64. Q. Wasn't this the way of it, that one or two quarters would be lowered down and then the slide or door shut until that was stowed away, and then the slide opened and more lowered down?

A. That is the way it was intended, but it was lowered so fast they did not have time to close the slide.

349 65. Q. In your conversation with Mr. Sherman last night did you have any conversation about the leaks in the boiler?

A. No, sir.

66. Q. Who began the conversation about the lawsuit and condition of the beef, you or Mr. Sherman?

A. I can't tell that.

67. Q. Didn't you understand, when you came on to New York, that you were to be examined as a witness in this case?

A. No, sir; I did not.

68. Q. Did Mr. Sherman say anything to you in that conversation about your testifying in this cause?

A. Yes, sir.

69. Q. What did he say to you?

A. The first I knew of any testimony to be taken in the case to-day was at Mr. Stillman's office, when he, Mr. Stillman, asked me to stay here until three o'clock to-day.

70. Q. Question repeated.

A. He said he wanted me to go with him up to Mr. Stillman's office to-morrow; that was the conversation last night.

71. Q. Then the first you knew that you were going to testify to-day, was this morning?

A. Yes, sir.

72. Q. You knew before this morning, didn't you, that you were going to testify some time?

A. Yes, sir.

73. Q. When did you first know that?

A. I can't tell; a good while ago.

74. Q. How did you learn it—from Mr. Sherman?

A. No, sir.

75. Q. How then?

A. I was told by a man in Philadelphia that I would be subpœnaed.

76. Q. Who is that man?

A. Issachar Hoops, a great friend of Mr. Zane's; he told me that the case was up, and that I was likely to be subpœnaed.

350 77. Q. How did he come to tell you that?

A. I don't know.

78. Q. When was that?

A. After Mr. Zane came back from giving his testimony the last time; I suppose he gave his testimony; I don't know.

69. Q. When was this conversation between you and Mr. Hoops?

A. I can't tell you.

80. Q. Did you tell Mr. Hoops that you were coming on to see Mr. Sherman this time?

A. No, sir.

81. Q. Did Mr. Hoops ask you to come on?

A. No, sir.

82. Q. When did you see Mr. Hoops last?

A. I can't recollect the exact date, probably three weeks ago; I have had no communication with him since.

83. Q. What led you to think that you might get a job by applying to Mr. Sherman?

A. Because Mr. Sherman told me last summer that if he heard of any position on a boat that he thought would suit me he would try and get it for me.

84. Q. Where was it he told you that?

A. In a letter.

85. Q. Did he write to you anything about this case?

A. Yes, sir.

86. Q. In that same letter?

A. No; but in another.

87. Q. Did he write to you that he would like to have you come and testify in the case?

A. No, sir; nothing to that effect; I have got the letters he wrote to me; I have some of his letters with me.

88. Q. In any of the correspondence did he say anything about the Francis Wright, or her owners?

A. I don't think he did; I can't just recollect, but I don't think he did.

351 89. Q. Did Mr. Sherman ever write you anything about testifying in the cause?

A. I don't think he did, to the best of my recollection.

90. Q. When was the conversation with Mr. Duncan after the return of the Francis Wright from this voyage?

A. In his office, I reckon; instead of my coming to Philadelphia in the boat I got off at Delaware City and come to Philadelphia on the cars; Mr. Zane was with me; when we arrived at Philadelphia we met a lot of the gentlemen who were concerned in the beef business at the depot. We then went to Mr. Wilson's, house, and I met Mr. Duncan there, and he and I went to Germantown in the cars.

91. Q. Didn't you on one occasion have a conversation with Mr. Duncan about this voyage one evening at his house in Germantown?

A. I might have had; I have been to his house several times.

92. Q. In that conversation did not Mr. Duncan ask you what was the condition of the beef at Key West, and did you not tell him it was good, or words to that effect?

A. I don't recollect.

93. Q. Will you swear that you did not?

A. No, sir.

94. Q. Did not Mr. Duncan in that conversation ask you when you first suspected the beef was bad?

A. I don't recollect.

95. Q. And didn't you tell him that it was some days after you left Key West?

A. I don't recollect.

96. Q. Didn't you tell him in that conversation that Capt. Dennison's asking you to examine into the condition of the beef was some days after you left Key West?

A. No, sir; I don't think I did.

97. Q. And didn't you tell him that it was after that examination made by you at Capt. Dennison's request after you left Key West that you began to think the beef was bad, or words to that effect?

352 A. I don't recollect of any conversation.

98. Q. Didn't Mr. Duncan in that conversation ask you what you thought was the cause of the spoiling of the beef?

A. We may have had such conversation, but I don't recollect it. I had my idea as to the cause of the spoiling of the beef, and I told a great many people, and may have told Mr. Duncan.

99. Q. Didn't you tell Mr. Duncan that in your opinion the cause of it was the leaking of the boiler?

A. No, sir; I don't think I ever made that remark.

100. Q. Didn't you, in your conversations with me, Mr. Benedict, express your opinion that that was the cause?

A. No, sir; I don't think I ever did; if I did, I must have told you different than I told anybody else.

101. Q. Don't you remember having several full conversations about the voyage with Mr. Duncan after your return?

A. Yes, sir; I had never known Mr. Sherman before that voyage of the Francis Wright.

102. Q. Have you had any conversation with Captain Dennison about the voyage since the other trial?

A. I suspect we have; we meet very frequently; I could not tell you any part of the conversation; I expect to go back to Philadelphia as soon as I get through with this examination.

Redirect:

I looked at the thermometer between Galveston and Key West; I can't recollect how high it was. I was out of employment; I met Mr. Duncan in Germantown on one occasion; I spoke to him about getting something to do; he then spoke of this expedition which was to start in the course of a few days; he said, "If you want to go, I will give you a pass there and back," and he said it might lead to some-
353 thing permanent for me, or something to that effect, and in the meantime I should look out for his interests, which I did, the best I knew how.

103. Q. In your cross-examination, you say you cannot recollect any particular time when those on board the Francis Wright remarked the unpleasant odor from your clothing when you came up from the refrigerating room. Was it not the fact that they generally remarked it when you came up from the refrigerated room?

(Objected to as leading.)

A. Yes, sir.

104. Q. Did you observe it or not in the clothing of others when they had been down in the refrigerating room?

A. No, sir.

105. Q. After you left Key West, did you at any time go down into the refrigerating room to see what was the condition of the beef?

A. No, sir; I don't think I did; I can't recollect those matters as close as that.

106. Q. Is your memory distinct as to its being on the passage from Gavleston to Key West that Captain Dennison did ask you to go down and inspect the beef?

(Objected to as leading.)

A. Yes, sir.

107. Q. You stated that you did have an idea, which you stated to a great many persons, what caused the spoiling of the beef; what was that idea?

(Objected to as immaterial.)

A. I thought it was killed too long before it was put into the refrigerated room.

H. C. REEDER.

Subscribed and sworn to before me this 13th day of October, 1874.

EDWARD L. OWEN,
U. S. Commissioner.

354 UNITED STATES OF AMERICA.
SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss:

Be it remembered, that on this 17th day of October, in the year of our Lord one thousand eight hundred and seventy-four, I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes de-

pending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at number 71 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, John A. Sherman, to testify and the truth to say, on the part and behalf of the claimants and appellees in a certain suit or matter of controversy now pending and undetermined in the circuit court of the United States for the southern district of New York, at New York, on appeal from the district court of said district, wherein Jacob M. Duncan & Simon Poey are libellants and appellants, against the steamer Francis Wright, her engine, &c.

And thereupon the said JOHN A. SHERMAN having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said John A. Sherman, and he did thereupon depose, testify, and say as follows, viz:

355 I am 36 years of age; I have been examined in the district court in this case; I was chief engineer of the Francis Wright; I should judge we were seven or nine days loading beef at Galveston; I saw some of the beef brought to the ship; it was brought down by cars and loaded direct from the cars to the ship; on the ship it was cut up and then put in the hold; the halves were cut in two, and the shank bones were cut off and the rib pieces were cut off; I noticed the condition of the beef as it came on board; that that I saw, some of it was bad and some looked to be good; I saw some put in the refrigerated room; some of it was bad, some of it was fly-blown.

1. Q. Did you remark that at the time?

A. I did; I spoke to Mr. Wilson and the butcher, who was cutting it, about its condition; I said that beef was bad; Mr. Wilson said, "No, it would go." I said, "My God, you can't preserve that meat home."

2. Q. Was any of the meat that was sent into the refrigerated room sent up again?

A. Yes, sir.

3. Q. What was done with it?

A. A part of it was cut off and thrown away, the other part put in the refrigerated room again.

4. Q. Do you know the condition of the part that was thrown away? If so, state what it was.

A. Yes; it stunk; I spoke to Zane about the condition of the beef at Galveston.

(Objected to.)

5. Q. What was that conversation?

(Objected to.)

A. I told him the meat was bad; that we could not get it home; he said he knew that, and had written home to that effect.

6. Q. That conversation was in Galveston?

A. Yes, sir.

356 7. Q. During the time you was in Galveston how was the temperature?

A. It stood above 90° most of the time. I had seen it 94° and 96°.

8. Q. Was any of that meat which was brought to the vessel suffered to remain in the cars over night?

A. Yes, sir.

9. Q. Do you remember the circumstances connected with that? If you do, state them.

A. I remember it coming down Saturday evening, and being cut up on Sunday and put in.

10. Q. What time of day did they begin to cut it up on Sunday, and what time did they get through?

A. I think it was somewhere near breakfast time when they commenced, and it was after dark, or about dark, when they finished; they had the lamps lighted to see to cut it up.

11. Q. What was the condition of the beef that came aboard that Sunday from the cars?

A. It looked bad, and some smelt bad.

12. Q. How looked bad?

A. Well, green and fly-blown.

13. Q. What proportion of the meat put on board that Sunday was put down in the refrigerated room?

A. I should judge over two-thirds of it, or more than two-thirds.

14. Q. What was done with the rest?

A. It was thrown in the offal heap.

15. Q. Was any of this meat put on the table to eat between Galveston and Key West?

A. Yes, sir.

16. Q. Did you eat any of it?

A. Yes, sir; the first two days after leaving Galveston the second time.

17. Did you eat any after that?

A. No, sir.

18. Q. Why not?

A. It was bad.

19. What do you mean by bad?

A. It smelt bad.

20. Q. That was between Galveston and Key West, was it?

357 A. Yes, sir.

21. Q. Do you know the condition of the beef between Galveston and Key West? If you do, state what it was, and how you know.

A. I only know by the stench arising from the hold.

22. Q. At Key West do you know of any meat being sent up to the Russell House?

A. I saw a piece that was sent there.

23. Q. Who got it out of the refrigerated room, do you know?

A. I don't know.

24. Q. Did you afterwards see it at the Russell House in Key West?

A. I did.

25. Q. Who was with you then?

A. Captain Dennison.

26. Q. Did you notice the condition of that meat there?

A. Yes, sir.

27. Q. Did you have any conversation with Captain Dennison about it? If so, state it.

(Objected to.)

A. He stated that piece was bad, and the whole cargo was spoilt. That conversation was in the Russell House.

28. Q. Do you know whether or not Reeder was sent down into the refrigerated room on the voyage from Galveston to Key West?

A. Only what he told me, and I don't know as he told me.

29. Q. Did you notice any odor about the clothing of any person

when they came from the refrigerated room, between Key West and Galveston?

(Objected to.)

A. I did, sir.

30. Q. What was the odor?

A. It smelt bad; it stunk of rotten meat; I can't describe it.

358 31. Q. Before any meat was put into the refrigerated room at Galveston, was any attempt made to dry and cool it?

A. Yes, sir; there was.

32. Q. With what result?

A. The refrigerated room was not dry, and the temperature was not as low as they wanted it.

33. Q. Why wasn't it dry; do you know?

A. Only by what I was told by Mr. Wilson and Mr. Zane.

34. Q. State what they said.

(Objected to.)

A. They had their doubts about keeping the meat; they could not get the temperature low enough with the apparatus we had.

35. Q. Was there any difficulty with the cooling apparatus between Galveston and Key West; and, if so, state what it was?

A. There was—the blower belts running off and the lacings breaking.

36. Q. What was the result of that on the blower?

A. The blower would be stopped from ten minutes to a half hour.

37. Q. How often did this occur on the voyage from Galveston to Key West?

A. Every day. Sometimes two or three times in the twenty-four hours.

38. Q. Had the blowing out of the boiler tubes anything to do with this stoppage of the blower?

A. No, sir.

39. Q. State, if you know, what caused the belt to slip off, and the lacings to break?

A. The water from the ice-house running under the belt; the belt running in that water.

40. Q. The belt passed around a wheel; was the wheel down to the deck?

A. The deck was scooped out an inch and a half for the wheel to work in it, so that the wheel worked below the level of the deck.

359 41. Q. Do you know or not whether the floor of the ice-house was tight or not?

A. It was not tight.

42. Q. How do you know that?

A. I saw it; I saw the water run down.

43. Q. Where did the water go that run down?

A. It went into the bilge and into the meat hold; into the refrigerated room.

44. Q. The difficulty that you have mentioned with the blower, did it exist in Galveston?

A. Yes, sir; it did.

45. Q. To what extent; as much or less as on the voyage to Key West?

A. About the same.

46. Q. On your voyage from Philadelphia to Galveston did you carry any cargo out in this refrigerated room?

A. Yes, sir.

47. Q. What was the condition of that cargo when delivered in Galveston?

A. Part of it was damaged.

48. Q. By what and how?

A. By the dripping from the ice-house; the water running from the ice-house down.

49. Q. Was anything done in Galveston to prevent that leakage on the return voyage?

A. I could not say; I don't recollect.

50. Q. When you arrived at Philadelphia or Delaware City was there or not any water in the refrigerated room?

A. There was none reported there; I did not go down.

51. Q. Were there or not holes bored, after you came back, in the floor of the refrigerated room?

A. Yes, sir.

52. Q. What was that for?

A. To let the water out after the hold was cleaned; it would not run out, only that way.

53. Q. Did Captain Dennison consult with you in relation to returning to Galveston for repairs to your boiler tubes?

360 A. He did.

54. State what passed on that occasion.

(Objected to.)

A. I reported to him ready to proceed on the voyage to Key West; he wanted to proceed to Galveston instead of Key West, and said if I would guarantee that we could go to Key West without any further stoppages, he would go to Key West; I told him I could not; then he said we will go to Galveston; I said I protest against going back to Galveston, as we are all right and can proceed to Key West.

55. Q. On the voyage home from Galveston, did you have any conversation with Zane in reference to any letter he had written from Galveston?

(Objected to,)

A. Yes, sir.

56. Q. State the conversation.

A. I told him that meat was spoilt; he said he knew it, and he had written home that he could not get the meat home safe.

57. Q. Did he say where that letter was written from?

A. Yes; from Galveston.

58. Q. Was this conversation before or after you arrived at Key West?

A. I am under the impression it was before, but can't say positive.

59. Q. Was anybody present at that conversation besides you and Zane?

A. Yes, sir; Mr. Goetchius, and I think Mr. Geddings.

60. Q. What, in your opinion, was the cause of this beef being spoiled?

(Objected to.)

361 A. My opinion is the apparatus was not sufficient to keep the temperature low enough, for one reason; the beef bad when it was put in the ship was another; that is all.

Cross-examined:

Since January, 1873, I have been in Jay Gould's employ most of the time; from January, 1873, to April, 1873, I was in the employ of Woodhouse & Rudd, and from that time until the 20th of September, 1874, in the employ of Jay Gould; from that time until now in the employ of Oliver Charlick.

61. Q. Was the engine running at Galveston while the beef was being taken on board?

A. Yes, sir.

62. Q. Was it running while they were in Galveston before they began to take the beef on board?

A. Yes, sir; I had charge of the engine.

63. Q. How was the blower run before they began to load the beef?

A. By the engine.

64. Q. Which engine?

A. By the auxiliary engine.

65. Q. That is the engine you spoke of before?

A. Yes, sir.

66. Q. During that time where did that auxiliary engine get its steam?

A. Part of the time from the auxiliary boiler and part of the time from the main boiler.

67. Q. Why didn't you use the donkey boiler all the time?

A. Well, it was easier to use the main boiler; the engine worked water from the donkey boiler, and it did not work so well as it did from the main boiler.

68. Q. Didn't you find that the donkey boiler was too small?

A. No, sir.

69. Q. Didn't you enter in your log that it was too small?

A. I don't remember; I may have.

70. Q. If you did, was it true?

A. Well, I may have entered it at that time as being small be-
362 cause the engine worked water; afterwards we remedied it by not carrying so much water in the donkey boiler.

71. Q. Did you use the donkey boiler and the main boiler at the same time?

A. No, sir.

72. Q. You say you remedied the difficulty with the donkey boiler; when was that?

A. A few days after we started the engine; I don't remember exactly the time.

73. Q. Wasn't it the reason for your using steam on the main boiler that the donkey boiler was too small?

A. I don't that was the reason.

74. Q. What do you think was the reason for using the main boiler?

A. One reason was to keep my men on board and preserve the donkey boiler; we had to use salt water for the donkey boiler; I think that is all the reasons.

75. Q. How much of the time during the loading of the beef were you away from the engine?

A. I can't recollect that.

76. Q. Can you give us any idea?

A. No, sir.

77. Q. It was your duty to be there in charge of the engine, wasn't it?

A. Not all the while.

78. Q. How much of the time?

A. Twice in twenty-four hours to get the reports and make a tour of my department; I was there more than that.

79. Q. Can you tell how much of this beef you saw brought on board?

A. Well, I saw some of nearly every car load.

80. Q. It was brought to the ship, the carcasses in halves, was it?

A. Halves or quarters, I don't remember which.

81. Q. Then you are not sure that you are correct when you say that the halves were cut in two?

A. They were halves or quarters; I don't remember now what they were.

363 82. Q. Were the quarters cut in two?

A. I say I don't remember now whether they were halves or quarters.

83. Q. You say you spoke to Mr. Wilson about the condition of the beef; when was that?

A. I can't recollect the day; but it was while they were putting meat in.

84. Q. Do you recollect whether it was the first day or the last day?

A. I remember the circumstance very well, but can't remember the day.

85. Q. Did you speak to him more than once?

A. I can't say that I did, but I am under the impression that I did.

86. Q. Was anybody else present?

A. The butcher who cut it up; I don't know his name; he was a butcher from the shore; Reeder was also present.

87. Q. Do you recollect what sort of a piece it was you spoke of?

A. Yes, sir; it was a square chunk of hind-quarter—nearly a whole quarter; this had been trimmed.

88. Q. What were you doing at the time of that conversation?

A. Standing on deck by the hold.

89. Q. Did you continue to stand there after the talk, or did you go away?

A. I stood there a few moments, and saw the piece lowered back in the hold again; then I went away.

90. Q. Was this a piece which had been in the hold before?

A. Yes, sir.

91. Q. How do you know that?

A. I saw it sent up out of the hold.

92. Q. After it was sent up, was it trimmed?

A. Yes, sir; a piece was cut off.

93. Q. Did you see any other piece that had been lowered into the hold taken out again while loading?

364 A. No, sir.

94. Q. Did you see any other piece put into the refrigerated room that you thought was bad?

A. Yes, sir.

95. Q. Was that at this same time, or another time?

A. At this time.

96. Q. Did you say anything to Mr. Wilson about their condition?

A. Not to Mr. Wilson while it was being put in.

97. Q. Then you would have us understand that you saw them loading beef, to take to Philadelphia, which you knew was already bad, and you said nothing about it at the time?

(Objected to.)

A. I didn't know it was bad; I thought it was bad; this one piece I smelt of, and it stunk.

98. Q. Didn't you say that you saw some of the beef was fly-blown?

A. Yes, sir; but I don't mean this particular piece I have spoken of, but other pieces.

99. Q. Don't you know that beef that is fly-blown is bad?

A. I know that I would not eat it.

100. Q. Question repeated.

A. I don't pretend to be a butcher.

101. Q. Question repeated.

A. I have always been led to suppose that it was.

102. Q. Then you would have us to understand that you saw them loading beef on this vessel to take to Philadelphia, that you knew was already fly-blown, and you said nothing about it at the time; is that so?

A. I did say something about it.

103. Q. Did Mr. Zane tell you about his having written home that he could not get the beef home, more than once?

A. I think it was but once.

104. Q. When was that?

A. After we had left Galveston; between Galveston and Key West.

365 105. Q. How did he come to say that to you?

A. It came in a general conversation, one evening.

106. Q. What had Mr. Wilson to do with the beef, as far as you know?

A. I suppose he was superintending the putting in of the beef.

107. Q. You saw him superintending, did you not?

A. Yes, sir—directing.

108. Q. Was there any one else directing, except Mr. Wilson, that you saw?

A. They all had something to say about it—Captain Dennison, Reeder, and Mr. Zane.

109. Q. Did you ever see Mr. Zane on deck directing the lowering of the beef?

A. I don't remember seeing him directing the lowering of the beef.

110. Q. You said in your direct examination that on the voyage from Galveston you told Mr. Zane the meat was spoiled, and he said he knew it, and that he had written home that he could not get the meat home safe. When was that conversation?

A. I can't recollect the day; it was in the evening.

111. Q. Did you ever have any such conversation more than once?

A. I am under the impression that we did have, but I can't say positive as to that.

112. Q. Have you any impression as to when the other time was that you had that conversation?

A. One morning sitting forward, while on the voyage; this conversation forward was about the meat, but I don't recollect what it was.

113. Q. Do you recollect of any other occasion when you had any conversation with Mr. Zane about the letter?

A. No; none but that one in the evening.

114. Q. Did you go into the refrigerated room in Galveston?

A. I did once before the meat was in and once afterwards; that last was before we sailed from Galveston the first time; I did not go into it after we sailed from Galveston the first time; I saw the holes

366 bored in the floor of the refrigerated room at Philadelphia; I was in the room at the time; that was the first time I had been in the room since the time I was in it at Galveston; I don't recollect whether Mr. Wilson was there on this Sunday I have spoken of, while they were lowering beef, but I am under the impression he was there; I took my meals on the voyage in the cabin, at the captain's table; the captain, Mr. Zane, Mr. Reeder, Giddings, the first and second officers, ate at that table; I don't remember any others.

115. Q. Wasn't some of this beef on the table after you left Key West?

A. I think it was, one meal.

116. Q. Wasn't that the second or third day after you had left Key West?

A. No, sir; I think we threw it overboard the third day after we left Key West.

118. Q. Don't you remember that you left Key West on the 15th, and that the beef was not thrown overboard until the 20th?

A. I don't remember the day or the date we left Key West.

119. Q. When that beef was on the table, after you left Key West, didn't you yourself eat of it?

A. No, sir.

120. Q. Didn't Captain Dennison on that occasion ask you if the beef was good, and didn't you in answer say that it was good enough for you, or words to that effect?

A. In a joking way I said this was bully beef, but we were all remarking about its smelling bad.

121. Q. Do you remember any occasion after you left Galveston when you saw the refrigerated room open?

A. Yes, sir; I saw the cook bring a piece out one morning; that is the only occasion I recollect; this was before we got to Key West.

122. Q. Where were you when you saw the cook come out?

A. Standing by the ladder as he came up.

367 123. Q. Did you have any conversation with him?

A. Yes, sir.

124. Q. Do you know at all what was the temperature of the refrigerated room before the beef was put in?

A. I am under the impression that it was down to 44°; that was the lowest.

125. Q. You say that you were told by Mr Wilson and Mr. Zane that they could not get the temperature low enough with the apparatus they had; wasn't that when you were using the donkey boiler?

A. Yes, sir.

126. Q. After you used the main boiler didn't the temperature go lower?

A. Yes, sir; and it did with the donkey boiler, too.

127. Q. Don't you know that the temperature went down when they used the main boiler to 42°?

A. Yes, sir; and with the donkey boiler also.

128. Q. Didn't you have a difficulty, while you were loading beef and taking steam from the main boiler, with the tubes in the main boiler blowing out?

A. We had trouble with the tube leaking; the tubes did not blow out but leaked; no tube blew out while we were loading.

129. Q. Didn't you have to stop getting steam from the main boiler, because a tube blew out?

A. Not until after we had steam on the donkey boiler.

130. Q. Did you have any difficulty with the blower belts while you were loading the beef?

A. We did.

131. Q. Any other difficulty than what you have spoken of as occurring on the voyage after you started from Galveston?

A. Only with the belts; none other that I recollect now.

132. Q. Did you ever make any entry in your log, after you left Galveston, of any difficulty with the blower belts?

368 A. I don't know as I did.

133. Q. If you entered in your logs the difficulty with the blower

belts at one time, wouldn't you enter whenever there was any similar difficulty?

A. No, sir.

134. Q. Why would you enter it at one time and not at another?

A. Sometimes the man on watch might enter on the slate "broke blower belt," wanting to make it appear that he did a great deal of work, and another time he would neglect to put it down.

135. Q. Did you have steam on the donkey boiler on the voyage after you left Galveston the second time?

A. I think we did.

136. Q. Will you swear that you did?

A. We always had steam; if we stopped the main boiler, we had steam with the donkey boiler.

137. Q. Didn't you always enter in your log whenever you got steam on the donkey boiler?

A. I don't know.

138. Q. Do you mean to say that you, as an engineer of a ship, keep a log in which you would fail to enter the fact of your getting steam on a donkey boiler?

A. There are a great many of those little things that we don't enter in the log.

139. Q. Did you ever mend the blower belts?

A. Yes, sir; by lacing them; I did it often; I can't remember the number of times; there was not a day but what they were laced; sometimes three times a day.

140. Q. Did you ever make an entry in your log of that's being done?

A. I think I have.

141. Q. You have spoken of the floor of the ice-house not being tight; you do not mean by that the refrigerated room?

A. I mean the ceiling of the refrigerated room; the floor overhead.

142. Q. What cargo did the vessel carry out?

369 A. A general cargo; hardware, apples, cabbage—a general cargo; I did not have anything to do with the discharge of the cargo in Galveston.

143. Q. How soon after you came back to Philadelphia was it that these holes you have spoken of were bored in the hold?

A. When we were cleaning the hold; I don't know how soon after our arrival; it may have been a week.

144. Q. Do you recollect Mr. Matthews coming on board when the ship arrived in Philadelphia?

A. I don't know as I know him; I don't recollect the clerk of Duncan & Poey coming on board.

145. Q. You say you reported to Captain Dennison after you left Galveston the first time that you were ready to proceed on the voyage to Key West?

A. Yes, sir.

146. Q. When you made that report, wasn't the boiler still leaking?

A. Not to cause any annoyance.

147. Q. Question repeated.

A. No, sir; not what we term leaking.

148. Q. Were the tubes all tight?

A. They were all tight but one.

149. Q. Didn't that one leak?

A. It was just wet a little.

150. Q. Didn't you tell the captain that you could not repair them as you wanted to with the tools you had on board?

A. No, sir; they were repaired on board with the tools we had.

151. Q. Did you know that that tube wasn't tight before you got steam on?

A. Yes; that tube afterwards became tight; when we got back to Galveston they were all tight.

152. Q. Did Mr. Zane tell you to whom he had written the letter you speak of?

(Objected to.)

A. No, sir.

153. Q. Did you have a thermometer in your engine room?

370 A. I think there was one there.

154. Q. Have you any recollection of looking at any thermometer while you were in Galveston?

A. Yes, sir; at the hotel in Galveston.

155. Q. Did you look at any of the thermometers connected with the refrigerating apparatus?

A. Yes, sir.

156. Q. When?

A. Several times in the blower room; every day, probably.

157. Q. What time did you get into Key West?

A. I don't recollect the time; it was in the afternoon; we stopped up one tube then, I think; I was there seeing to these repairs; I went ashore the evening of the day we got there; I don't recollect what time we got steam up the next morning; I don't recollect whether I was on board when steam was got up, but I am under the impression I was; I recollect a fireman's refusing duty and being tied up; I think I tied him up; I was ashore this morning; I was at the Russell House early in the morning, along about breakfast time; I was at the Russell House two or three times that morning.

158. Q. After you came back to Philadelphia, do you recollect this gentleman (Mr. Matthews, here present) coming on board the ship?

A. Yes, sir; I don't recollect of his giving orders to have nobody come on board the ship.

159. Q. Hadn't you seen him on board the ship before she left Philadelphia?

A. I don't remember.

160. Q. When he came on board after your arrival, didn't he come to you and have a conversation with you about the voyage?

A. I don't recollect it.

161. Q. Didn't he ask you on that occasion what had been the difficulty?

A. I don't remember of ever having any conversation with him; I took him for one of the partners in the house.

371 162. Q. And didn't you, in answer to such question from him, say "the damn boiler has gone back on me again," or words to that effect?

(Objected to.)

A. No, sir; I did not say it; I swear positively I did not say it.

163. Q. Didn't you receive just after that, and while he was present, a letter from Woodhouse & Rudd?

A. I remember receiving a letter from Woodhouse & Rudd, but when and what time it was I don't know.

164. Q. Did you ever see any of this beef before it was brought alongside of the ship?

A. I think I saw three or four head killed at the slaughter-house at Poolesville.

Redirect:

165. Q. At Galveston, was there any time when the blower was not running, except when you stopped to repair the band?

A. There was one night. [I asked Mr. Zane if it would do any harm to stop the blower; he said no.]

(Part in brackets objected to.)

It was stopped when the blowing engine was taking water from the donkey boiler; I think the first lot of beef was in the hold; that was stopped by Mr. Zane's consent, because the blowing engine worked water from the donkey boiler; Duncan & Poey had the blowing engine put in, so I supposed. I can't remember the date of my conversation with Mr. Zane; it was before we arrived at Key West, and after we left Galveston; I can't remember the purport of the conversation forward; I was not employed to look after these blower belts; I did it as a favor to Mr. Wilson; he requested it; the difficulty in the belts was caused by their running in water; the belt, getting wet, would not ad-
372 here to the belt wheel; it would stretch, slip off, and cause the lacing to slip too; the place cut in the deck was cut to accommodate the machinery put on board by Duncan & Poey; it was cut by their own carpenter, who had no connection with the ship.

166. Q. You say you received a letter from Woodhouse & Rudd, in Philadelphia; did you answer it?

(Objected to.)

A. I did.

167. Q. Is that the answer that you wrote to that letter?

(Objected to. Withdrawn.)

168. Q. Was that a letter or telegram?

A. The first was a letter.

169. Q. Did you answer that letter?

(Objected to.)

A. I think I did.

170. Q. Then did you get a telegram from them?

(Objected to.)

A. Yes, sir.

171. Q. Then did you answer that telegram?

(Objected to.)

A. Yes, sir.

172. Q. Was that all the correspondence between you?

(Objected to.)

A. I think about all.

173. Q. Will you look at that letter and state whether that is the answer to the telegram?

(Objected to.)

A. Yes, sir.

373 (Letter marked for identification A. E. L. O., Oct. 17th, 1874. Letter offered in evidence.)

(Objected to.)

(Same marked Exhibit 1, E. L. O., Oct. 17th, 1874.)

174. Q. Between Galveston and Key West was there any, and, if so, what sort of an odor pervading the ship from the beef?

A. There was a very sickly smell; you can't describe the smell of a piece of rotten meat; but there was a stench all through the ship coming from Galveston to Key West.

Recross:

175. Q. The entries in this letter, Exhibit 1, were they taken from your log?

A. I don't recollect whether I took them from my log or not; I think I did; this is the only letter I wrote to Woodhouse & Rudd after we arrived concerning the trip; I wrote one concerning the repairs on our first arriving there; I do not recollect the day of the week we arrived in Philadelphia, but I think it was Friday or Saturday.

176. Q. When you say you wrote concerning repairs, what do you mean by repairs?

A. What work had to be done in Philadelphia before making another voyage; this was in reply to a letter from them asking me what repairs were to be made.

177. Q. Didn't you, in the first letter, give them a narrative of the occurrences of the voyage?

A. I don't remember, it is so long ago; I kept no copies of the letters.

178. Q. Did you write more than two letters to them?

A. I think that was all; I have not kept the letters they wrote to me.

179. Q. The time the blowing machine was stopped during the night was while you were working it with the donkey boiler, and before you worked it with the main boiler, was it not?

374 A. Yes, sir.

180. Q. Do you know what kind of belts they had?

A. Leather and rubber, both.

(The witness states that he understood that his testimony showed that the conversation with Mr. Zane was at Galveston; this conversation was between Galveston and Key West.)

JOHN A. SHERMAN.

PHILADELPHIA, *Nov.* 26, '72—2 p. m.

Messrs. WOODHOUSE & RUDD:

SIRS: I have just received a telegram from you saying, send full particulars of your department, &c. I wrote you Sunday night (24th) all that had occurred since leaving Galveston, but judge by this dispatch that my letter has not reached you. To commence, we left Galveston, on Thursday, Nov. 7 (7 a. m.), everything working good; crossed the bar and head for Key West at 8.10 a. m.; drawing 9 feet 6 inches aft and 8 feet forward; with a strong N. N. E. wind and high sea; all went well until 4 p. m., when the ship was hauled up in the wind and hove to against my protest; lost 20 hours; at 12 m., 9th, (sea time) squared away on our course; wind still N. N. E.; ship being steered very bad. On the 10th all worked well until 7 a. m., when a tube was found leaking; at 8 a. m. plugged tube up with wooden plugs, losing no time. Nov. 11th, all worked well this day; 12th, all worked well. On the morning of the 12th, at 4 a. m., the chief mate took lunar observations and found the we was 30 miles to the southward of our course; ship's course changed accordingly, & at 12 m., by mate's observation, the ship was 40 miles north of our course; course changed again, and so it has been all the way home. 13th, all worked well until 7.50 a. m.; blew

375 a tube out; ran slow 9 hours per capt.'s orders. 14th, took pilot off Sand Key at 12.40 p. m.; at 3 p. m. arrived at Key West; stopped the tube up that was leaking with rods and caps; took in 60 tons of coal and 20 tons of ice at Key West, and all ready for sea again at 5 a. m. 14th; left Key West at 1.30 p. m. on the 15th (nautical time). All worked well this day. Nov. 16, all doing well until 4.30 p. m.; blew a tube out in boiler. 17th, heavy N. N. W. wind and high sea all this

day; engines worked well; boiler steamed hard on account of tube leaking; broke the connections to donkey boiler. 18th, wind and sea moderating; repaired connections to donkey boiler; stopped engines at 2 p. m., blew steam off and commenced repairing tubes; stopped up three with rods and caps; steam on and engines working again at 9 p. m.; detained 7 hours. 19th, all worked well this day. 20th, all worked well. 21st, all went well until 11 a. m., when the tubes commenced leaking; stopped engines, banked fires, and commenced repairing tubes; put in three ferrules and stopped up one with rods and caps; detained 5 hours. 22d, all went well; at 1.15 a. m. stopped in Delaware breakwater for pilot; detained fifteen minutes, and arrived at Delaware City 12 m.; took in 7 tons of coal, and laid with steam on until 5.40 a. m., civil time (23d), and arrived in Philadelphia at 10.30 a. m., with the cargo of meat all spoiled. I was shown an article in a paper saying the meat was spoiled by water and steam getting in the hold from the boiler. It's no such thing. It's utterly impossible. Part of the meat was bad when it was put in the ship, which can be proven; but I think it was all spoiled by being short of ice, and by water from the ice house leaking down on it. We have lost some time on account of the tubes leaking, but not enough to spoil the meat. The ship has been poorly navigated and very badly steered. As soon as I can get my log-book from Duncan & Poeys, I will send it to you. Everything is in confusion
376 here just now. The crew have all quit, and are waiting for their money. The local inspectors here have examined the boiler, but can't see anything wrong; and to-day a commission from Messrs. Duncan & Poey, consisting of port wardens and boiler-makers and engineers, made an examination, and discovered nothing wrong, and treated the idea of water getting in the hold as an absurdity. Nothing has occurred in the engine department to spoil the cargo. The meat stunk before we got to Key West. We had bad weather all the way home—heavy wind and high seas. There has been no discipline whatever in the ship. I will explain more fully to you about the tubes when I see you. I have got twenty-six stopped up; six were so when we left here. I reported to the capt. yesterday (in writing), all ready for sea, to proceed anywhere; he to give me two hours' notice to get steam. We are in good enough condition to last the remainder of the three months. I hope you have got my letter I sent Sunday, as it's more explicit. If I don't see you before, I will be in New York Saturday afternoon, unless I get different orders from you.

Very respectfully, yours,

JOHN A. SHERMAN.

(Marked A. E. L. O., Oct. 17, 1874, for identification.—Ex. 1, E. L. O., Oct. 17th, 1874.)

Subscribed and sworn to before me this 17th day of October, 1874.

EDWARD L. OWEN,
U. S. Commissioner.

377 UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss:

Be it remembered that on this 17th day of October, in the year of our Lord one thousand eight hundred and seventy-four, I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more conven-

ient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appeared before me, in the city of New York, in the said southern district of New York, in the State aforesaid, William A. Russell, to testify and the truth to say, on the part and behalf of the claimants and appellees in a certain suit or matter of controversy, now pending and undetermined, in the circuit court of the United States for the southern district of New York, at New York, on appeal from the district court of said district, wherein Jacob M. Duncan and Simon Poey are libellants and appellants against the steamer Francis Wright, her engine, &c.

And thereupon the said William A. Russell, having been by me first cautioned and sworn to testify the truth, the whole truth and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said William A. Russell, and he did thereupon depose, testify and say as follows:

I am fifty-six years of age; I reside now in Brooklyn; I was in
378 Key West in November, 1872, keeping a hotel; I remember the Francis Wright coming in to Key West with a cargo of beef; I had some of that beef at my hotel—the Russel House; it was given to me by Captain Dennison; he sent a small quarter to the house; he divided between some officers of a naval ship and myself; the part I kept was sent to the kitchen, cooked and put on the breakfast table; I did not eat any of it myself; I do not know whether it was all cooked for breakfast; I cut that piece of beef in two myself, and smelt of it; it did not smell bad or I should not have seen it to the kitchen; it did not look very prepossessing; it looked slimy; I have been in the habit of buying meat for my house, and I think I know what merchantable beef is.

1. Q. In your opinion was, or was not, that beef merchantable?

A. It was not such beef as I should have bought for my table.

2. Q. Was anything said by the boarders about the beef; and, if so, what?

(Objected to.)

A. When the boarders were going to breakfast I told Mr. Rawson, one of my oldest boarders, that I had some of that Texas beef on my table, and I wanted that he should try it; and when he came out from breakfast he said that beef was bad.

3. Q. Why didn't you eat of that meat yourself?

(Objected to.)

A. I probably should, but I am not in the habit of going to the first table.

4 Q. Did you ever hear Mr. Charles Tifft or Mr. C. T. Merrill say anything about the beef?

(Objected to.)

A. Not that I recollect of.

Cross-examined:

379 I do not recollect how the temperature was at Key West at this time; the usual temperature in the middle of the day at that time was about 80°, I should judge; the beef came from the ship that morn-

ing; we had breakfast at eight o'clock; I saw the beef when it came to the house; my steward, Alfred Collins, came with it, and I think a man from the ship brought it; I sent down once for it, and it did not come; I sent for it once before that morning; I had a refrigerator at the time, but I am confident that I did not put that beef in it.

Q. Don't you recollect that you were short of ice at that time?

(Objected to.)

A. I don't recollect.

Redirect:

It certainly was not over fifteen minutes after the meat was received that it was sent into the kitchen to be cooked; we did not have any of it for dinner, nor at any other meal after that.

W. A. RUSSELL.

Subscribed and sworn to before me October 17th, 1874.

EDWARD L. OWEN,
U. S. Commissioner.

380 UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
City, County and State of New York, ss:

Be it remembered, that on this 21st day of October, in the year of our Lord one thousand eight hundred and seventy-four, I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit under and by virtue of the acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An Act in addition to 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at number 71 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, to testify, and the truth to say, on the part and behalf of the in a certain suit or matter of controversy, now pending and undetermined, in the court of the United States, for the district of at wherein

And thereupon the said JOHN S. GOETSCHIUS, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said John S. Goetschius, and he did thereupon depose, testify, and say as follows, viz:

I am 27 years of age; I was on the Francis Wright in October
381 and November, 1872; I sailed in her from Philadelphia and returned to Philadelphia in her; I went out in her as second assistant engineer, and came back in the same position; I saw all the beef shipped on her voyage after it got to the ship in Galveston; the beef would arrive there sometimes at eleven and twelve, and as late as two o'clock in the afternoon; after it arrived it was put down in the hold in the refrigerated room; some of the beef was put in the refrigerated room as soon as it arrived, other of it was detained there from two o'clock in the afternoon on Saturday, until Sunday evening about eight or nine o'clock. By "detained" I mean it lay there from Saturday afternoon, until Sunday evening. I do not remember exactly how many days we

lay at Galveston taking in beef, but I should say it was six or seven days, it might have been longer; during that time I should judge the thermometer stood about 80° or 90°—I will not be certain.

1. Q. What would you call the weather?

A. Pretty medium warm; I have seen it warmer; I could not say what the temperature was on that Sunday, but as near as I can remember it was a great deal warmer that it was on Friday; Saturday and Sunday, I believe, were very warm days; I noticed the condition of some of the beef when it was taken on board—some of it smelt bad.

2. Q. Did you notice the condition of any of it that went down in the refrigerated room?

A. Yes, sir.

3. Q. State what it was?

A. I remember one piece going down and their sending it back; they said it smelt bad; they cut some of it off and send it back in the hold again; they began to load the beef that came down that Saturday afternoon pretty early Sunday morning; I don't remember exactly what time it was; I noticed that about all of the last two cars of beef were fly-blown; I ate some of this beef on the second day out from Galveston—on the first time we left Galveston—they had it on the table after that, but I did not eat any of it because it was tainted.

382 4. Q. Could you smell the beef on board the steamer on the trip from Galveston to Key West?

A. Yes, sir.

5. Q. How did it smell?

A. It smelt kind of strong; I did not smell it all times, but only sometimes when somebody went down in the refrigerated room; my room stood right over the blower next the refrigerated room; I think I could not smell it there at that time.

6. Q. Do you know what the condition of this beef was when you got to Key West?

(Objected to.)

A. Only what came on our table to eat; that was all I saw.

7. Q. What was its condition?

(Objected to.)

A. It smelt bad; I believe the meat that came on our table was taken from the refrigerated room.

8. Q. Did you have any conversation with Zane in reference to any letter?

(Objected to.)

A. Yes, sir.

9. Q. What was that conversation?

(Objected to.)

A. Mr. Zane told me that he had written a letter home, that he could not get the meat home safe.

10. Q. Did he state why he could not get it home safe?

(Objected to.)

A. He said some of the meat smelled when he put it in the hold; he told me this about the letter after we were out the first time from Galveston and before we returned; he stated it to me more than once;

383 once in particular when Mr. Sherman was with us and another man, whose name was Dan Giddings, I think; he was the boy in the refrigerated room with Mr. Zane. I had difficulty with the belts at the blower in Galveston; the lacings would break, and the holes where it was laced would pull out; water caused the lacings to break so often; the water accumulated under the driving or fly wheel; there was a hole

cut into the deck to allow the wheel to work in, and the water accumulated in this hole; the water came from the ice-house; there was a sweat on the lower side of the deck about the refrigerated room, below the ice; it was caused by the dampness of the ice, I suppose, in the ice house which was over the refrigerated room; while we were repairing the belts the blower was stopped; I have laced the belt twice in four hours, then again I have seen it run eight hours without lacing; I never saw it run a whole day without lacing; the difficulty with the lacing of the belt was at Galveston; we had about the same difficulty with the blower between Galveston and Key West; the blower would be stopped from twenty minutes to half an hour, sometimes longer and sometimes not so long; there was no time while lying at Galveston, or in going from Galveston to Key West, that the blower was stopped from defects in the boilers.

11. Q. Did you hear Captain Dennison say anything about the beef between Galveston and Key West?

(Objected to.)

A. I did.

12. Q. What was it?

(Objected to.)

A. I heard him say that he thought the meat smelt bad; he requested somebody to go and look at it; I don't know who it was.

13. Q. Was the condition of the beef talked of on the ship; if so, what was said?

(Objected to.)

384 A. It was; I don't remember exactly what was said; I know they talked about the condition of the beef.

14. Q. Is that all you remember about it?

(Objected to.)

A. I don't remember what was said; I know they talked about it.

15. Q. Do you understand my question?

A. I think I do.

16. Q. Do you remember what the general remarks were about the beef?

(Objected to.)

A. The general remarks were that the beef smelt bad; the bilge pumps work well.

17. Q. How were your bilge pumps on their way home from Galveston?

A. They generally sucked; the ship was by the stern on the way home; I don't exactly know how much she was by the stern; I knew she was down by the stern considerably; the refrigerated room was forward of the engines and boilers.

Cross-examined:

I am now in business for myself; in the trucking business here in New York; on the voyage of the Francis Wright, I was employed by Mr. Sherman; I was oiler and engineer together about three years; I was engineer probably six months or a year during that time; I had been engineer before this trip of the Francis Wright; I ran a stationary engine at the Stevens House before that; I ran a stationary boiler on the steamboat State of New York; this trip of the Francis Wright was the first time I had been engineer of a marine boiler; I was shipped on the Francis Wright as oiler, and then the second engineer left and I took his place; the second engineer left in Philadelphia just

385 before she sailed on this voyage; I had no license as engineer; I

had a permit in this way: Mr. Sherman got me the position and gave me orders to take charge, and what way he did it I don't know—I had no written permit; Mr. Hoffman was the first assistant engineer; Mr. Sherman was generally on my watch with me.

18. Q. Did you stand your watch in charge of that engine as Mr. Hoffman did?

A. No, sir; I did not.

19. Q. What was the difference?

A. Mr. Sherman was on watch with me; the watches were four hours each.

20. Q. Then, as I understand it, Hoffman would stand a watch of four hours, then you and Mr. Sherman a watch of four hours, and Hoffman again a watch of four hours; is that so?

A. No, sir.

21. Q. How then was it?

A. Mr. Sherman was on watch eight hours—on my watch and his own watch too.

22. Q. During your watch did Mr. Sherman take charge?

A. Yes, sir.

23. Q. Did he make the entries during your watch?

A. Yes; I used to take the turns of the engine once in a while for him; he was generally there when I did; I made no entries myself in the log-book; I made no entries on the slate, except as to the times of the engines or the oil I used, and those I never made unless Mr. Sherman was by; I had no charge of the beef department; I had nothing to do with the receiving of the beef; I was there and saw most of the beef going aboard the ship.

24. Q. You have spoken of some beef being stowed on Sunday; do you know what time they began to stow it?

A. I don't know the exact time; it was quite early Sunday morning; I don't say that I was on deck all that Sunday, but I saw the biggest part of the beef put in the hold.

386 25. Q. You have stated that about all of the last two cars of the beef were fly-blown; were those two cars in a worse condition than any of the rest?

A. Yes, sir.

26. Q. Were those two cars the beef that was put in Sunday?

A. Yes; Sunday and Sunday afternoon. I don't remember all the persons who were present while these two car loads were going in; Mr. Hoffman was there—he was cutting the beef; there was a butcher from shore there; Mr. Wilson was there occasionally, I believe; Mr. Zane was down in the refrigerated room; I saw Mr. Reeder there occasionally, and the first and second mates were there off and on. I think the second mate was in the hold helping to stow the meat; I was there most of the time; I sat there most of the time, except when I would go down and lace the belts, or something like that; this was the day that the piece of meat was sent back that I spoke of.

27. Q. Did you call anybody's attention to that meat's being fly-blown?

A. I spoke to Mr. Hoffman about it, who was cutting the meat.

28. Q. What did you say to him?

A. I asked Mr. Hoffman if he saw the meat was fly-blown, and he said he did.

29. Q. But he sent it right down in the hold just the same?

A. Yes, sir; Mr. Hoffman did not send it down—he was only cutting the beef; I don't recollect what meal it was that I ate the meat

on the second day out from Galveston; I ate it the day after we left Galveston; I don't recollect what time we left Galveston; we got back to Galveston in the afternoon, but I don't recollect the day; I remember we went out on Wednesday or Thursday—I ate the meat—I ain't positive what day we got back to Galveston; I was on duty with Mr. Sherman, who was in charge of the engine, after we started from Galveston the first time.

387 30. Q. Did you have anything to do with repairing the boiler after you left Galveston the first time, and before your return?

A. I did.

31. Q. Did you have anything to do with repairing the boiler after you got back to Galveston?

A. I did, sir; helped them fix the boiler, what was done to her?

32. Q. Before you returned to Galveston what repairs were done to the boiler?

A. We plugged some tubes; that is all I can remember we did.

33. Q. What did you have to do with it?

A. I helped put the caps on and helped screw up one end of the rod; I don't remember how many tubes were repaired.

34. Q. Were any tubes repaired in any other way than by plugging them up?

A. I don't remember exactly whether there was or not.

35. Q. After you got back to Galveston what repairs were done to the boiler?

A. There were some old rods taken out and new ones put back.

36. Q. Don't you remember of an expander being got?

A. I think I do.

37. Q. Don't you remember of Mr. Sherman's expanding some of the tubes of the boiler?

(Objected to as leading.)

A. I do not; not to my knowledge, I do not; he might have done it, but I don't remember.

38. Q. After you left Galveston the first time, and before your return, do you know whether the donkey boiler was used?

A. Yes, sir; I think it was used; I ain't positive; I am pretty sure it was used.

39. Q. Do you know whether it was used after the vessel got back to Galveston?

A. No, sir; I ain't positive.

388 40. Q. You say that Mr. Zane told you, before your return to Galveston, that he had written a letter home that he could not get the meat home safe. Was that after the boiler broke down or before?

A. I think, as nigh as I can remember, that he told me that the afternoon that we went out, after we got outside the bar.

41. Q. Question repeated.

A. It was before. I won't be positive whether Mr. Sherman was present when Mr. Zane told me that. I think the oiler was present; he was Hoffman's brother; there was some one there; I could not state who it was.

42. Q. Do I understand you that Mr. Zane said that he had written home, as the reason why he could not get the meat home safe, that some of it smelled when it was put in the hold?

A. Yes, sir; Mr. Hoffman also had charge of fixing the blower-belts as well as I. The oiler would help and Mr. Sherman would help sometimes. It always took two to do it.

43. Q. When the boiler was being repaired, after you left Galveston the first time, was the water let out of it?

A. No, sir; it was not all.

44. Q. Was any of it let out?

A. Yes, sir.

45. Q. How much?

A. I could not say. I could tell by gauge cocks that it was not all let out. We repaired that boiler without drawing the fires. We did not have steam on the boiler all the time, because we shoved the fires back and covered them over with ashes. I looked at the gauge-cocks. We had one cock of water that was about the second row of tubes from the top—that would lack about eight or nine inches of covering the tubes. I could not state exactly how many tubes that would leave exposed; the water was let out of the boiler by the blow-cocks and surface blow; the bilge pumps are worked by the engine. There is a pump with three different pipes that we can work on the bilger with the
389 donkey engine. The donkey engine got its steam from the main boiler when we had steam on it, and when we did not, from the donkey boiler. I don't recollect a time when we got steam on that donkey boiler after we left Galveston the second time. I have not talked this matter over with anybody since the voyage. Never talked it over with Mr. Sherman; never talked it over with Mr. Stillman or Mr. Towner. I heard part of Mr. Sherman's testimony the other day. I have just caught the first leaf of his testimony here to-day. I don't remember whether the meat was on our table after we left Key West.

Redirect:

Q. Did you hear Zane say anything about the effect of the car loads of beef which were put in on the Sunday you have mentioned on the rest of the beef in the ship.

(Objected to.)

A. I don't remember.

JOHN S. GOETSCHIUS.

Subscribed and sworn to before me October 21, 1874.

EDWARD L. OWEN,
U. S. Commissioner.

390 UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss:

Be it remembered that on this 24th day of October, in the year of our Lord one thousand eight hundred and seventy-four, I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,' passed March 1st, 1817," and the act entitled "An act to establish the judicial courts of the United States, passed September 24th, 1879, did call and cause to be and personally appear before me, at my office, at number 71 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Philip H. Hoffman, to testify and the truth to say, on the part and behalf of the claimants and appellees, in a certain suit or mat-

ter of controversy, now pending and undetermined, in the circuit court of the United States for the southern district of New York, at New York, on appeal from the wherein Jacob M. Duncan and Simon Poey are libellants and appellants against the steamer Francis Wright, her tackle, &c., Humphrey E. Wood and Joseph Rudd, jr.

And thereupon the said PHILIP H. HOFFMAN, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I
391 did carefully examine the said Philip H. Hoffman, and he did thereupon depose, testify, and say as follows, viz:

I am 31 years of age. In October and November, 1872, I was on the steamship Francis Wright as first assistant engineer. I was on her in that capacity on the voyage to Galveston for a cargo of beef. The Francis Wright was in Galveston about two weeks the first time; she took on a cargo of beef there, and was seven days doing it; during that time the weather was pretty warm. I did not see the atmosphere thermometer; the beef was brought to the vessel in box-cars; it was brought down in quarters and put on the ship; nothing was done to it before it was put on board the ship; after it was put aboard the ship the spare-ribs were cut off and the shanks; the car loads generally got to the ship about one; it would take from two until eight o'clock at night to put it in the ship; all except the last lot, or at least along towards the last, was put in on the same day it arrived; this last lot came down on Saturday in the afternoon late and remained in the cars all night until the next morning, when they began to put it on the ship, and they finished Sunday night. I assisted on this Sunday in putting it in the ship. I did not assist any other time. That Saturday night and Sunday the weather was very warm. I noticed the condition of this beef on Sunday when it went on board the ship. I should pronounce it very bad. It stunk. I merely took a look at the meat which came down before this last lot; passing along and merely looking at it, I should pronounce it good.

1. Q. On the Sunday when the last lot came down, did you notice the condition of any of the beef that went down into the refrigerated room?

A. I did.

2. Q. What was its condition?

A. Some of it was bad and stunk. We had more or less difficulty with the blower while in Galveston; it was caused by there being water
392 in the blower-room, and the belt running in the water; there was a hole cut in the deck to permit the belt to go on the wheel, and the water from the ice-room would run into that hole; the effect of that was to make the belt slip—belts and lacing stretching and breaking; we had to stop the blower to fix them. sometimes two or three times in a watch of four hours the blower would be stopped from fifteen to thirty minutes; I noticed the temperature of the refrigerated room during the stoppages; I generally looked at the thermometer whenever I went below to look and see that everything was all right; when the blower was running the thermometer stood at 42°; when it was not running the thermometer stood as high as 48° and 50°; in Galveston, and on the voyage from Galveston to Key West, we had this difficulty every day; the stoppages of the blower on each occasion were always caused by this difficulty with the belt by the water; we had some of the meat from the refrigerated room on the voyage from Galveston to Key West; I ate it along at first; I had it to eat, and ate it the first day out from Galveston the second time; it was getting pretty tainted; it had been in the refriger-

ated room then, as near as I can recollect, a good two weeks; after that some of it came on our table, it smelt pretty bad; the beef in the refrigerator affected the air of the ship on the voyage from Galveston to Key West; you could smell it all over the ship; it was a dead smell. I had no conversation with Zane in Galveston, except to pass the time of day; our bilge pumps were in good order, and our bilges were dry; while in Galveston, and on the voyage from Galveston to Key West, the ice-house either leaked or there was a condensing on the ceiling of the lower hold deck; we had cargo in the refrigerated room going out; the hardware was all rusted, and some of the other freight was spoilt upon arriving at Galveston; it was caused by water dripping from the ceiling above.

3. Q. Did your hear Captain Dennison say anything about this ice-house, and, if so, what?

(Objected to.)

393 A. I did; I don't remember who he was talking to at the time; I heard him say distinctly that the lower hold ought to have been ceiled with sawdust; he was aboard the ship; it was at Galveston; the cargo was thrown overboard about three days after we left Key West.

4. Q. What, in your opinion, was it that caused this beef to spoil?

(Objected to.)

A. Three reasons: first, on account of the ceiling leaking, the water dropping on the meat; second, the water running from the ice-house into the blower-room, on the belt; and, third, the blowing apparatus not being properly put in.

5. Q. Is there any other reason to cause the beef to spoil?

(Objected to.)

A. Not that I know of, sir; I helped cut up this beef on that hot Sunday; there were millions of flies around there; they affected the condition of the meat, getting fly-blows on the meat.

6. Q. In your opinion, did the condition of the meat put in on that Sunday have anything to do with the loss of the cargo; and, if so, what?

A. It did; it stunk when it came aboard.

7. Q. Did anything occur at Galveston, or on the voyage from Galveston to Key West, about the engine, machinery, or boilers, which caused any stoppage of the blower?

(Objected to as leading.)

A. No, sir; there was not.

Cross-examined:

I have been an engineer about seventeen years; Messrs. Duncan & Poey, I believe, employed me on the Francis Wright; Mr. Sherman hired me; I had been employed by Sherman once before, on

394 board the same vessel; it was on the trip to Brazos. I had a license as a first assistant engineer; I got my license in New York; I had not been serving with Mr. Sherman since the beef trip; on the trip to Brazos we had another assistant with us; on the beef trip Mr. Goetchius acted as second assistant; he stood his regular watch eight hours out of twenty-four, and I eight hours out of twenty-four, and Sherman the other eight hours; there was a log kept on that voyage; Mr. Sherman took off the entries every day from the slate, and entered them in the regular log; I did not make any entries in the regular log; I had nothing to do with that; but I made the entries on the slate during my watch; I did not keep any other memorandum.

8. Q. Did you ever make any entry on the slate that was not true.

A. No, sir; I never did.

9. Q. Did you ever examine the regular log?

A. No, sir; all I had to do with the beef was that Sunday; I was occupied in cutting up beef on that day from eight o'clock in the morning until eight o'clock at night, as near as I can recollect; I cut off the spare ribs and shanks I have spoken of; the regular butcher assisted me; I do not know his name; as we cut it up it was taken to be put in the refrigerated room.

10. Q. Did you reject any parts of that meat that day?

A. No, sir; I did not. I had no responsibility as far as that; the shanks and spare ribs were thrown on the dock.

11. Q. You knew, did you not, that the purpose of the voyage was to carry the beef in good condition to Philadelphia?

A. Yes, sir; I did, by hearing others say so.

12. Q. And do you say that you, knowing that to be the purpose, assisted in preparing and taking in beef that was already bad?

A. Yes, sir; I can't say that I saw those last two car loads that were taken in on Sunday come down; I hardly remember whether Mr.
395 Wilson was there on that Sunday; I rather think he wasn't there; Mr. Reeder and Captain Dennison were there on deck during the day; that Sunday, while I was cutting up beef, the oilers had charge of the engine; the oilers had charge of the blowing apparatus; they generally ran the blowing apparatus; the chief engineer has charge of all the works; I made no entries on the slate while the vessel lay at Galveston loading, that I remember of; I don't remember of ever having made an entry on the slate of the blower being stopped; I kept no record of the thermometers.

13. Q. When you say that the blower would be stopped from fifteen to thirty minutes, do you mean to swear that it never was stopped less than fifteen minutes?

A. It might be ten minutes; I said it might be from fifteen to thirty minutes.

14. Q. Do you mean to swear that it never was stopped less than ten minutes on any occasion?

A. Yes, sir; I mean to swear that it never was stopped less than ten minutes.

15. Q. Can you swear that you always looked at the thermometer when the blower was stopped?

A. Most generally always; when the blower was not running, the thermometer stood generally 48° or 50°; I 'didn't say it would right away, as soon as the blower stopped; it would stand so when I looked at it before coming up from the blower room; I generally always went to the blower room when the blower was stopped in my watch; I recollect the vessel leaving Galveston the first time; I recollect the boilers giving out after we left; it happened as we were changing watches, I believe; I was just coming off watch; I was around there afterwards in the engine room; I was there while the boiler was being repaired, and I helped repair it; it was repaired by calking by a peening hammer and a calking tool; to make those repairs the water was drawn off, the fires banked and covered with ashes; I think the water was
396 drawn half down; it was blown out half down in the first place, then the safety-valve was raised, and all the steam let off, and the pressure taken off from the boiler; we repaired every one of those tubes.

16. Q. Didn't one of them leak when you got steam on the boiler again?

A. One of them dripped; we did not repair it; after we got back to Galveston there were no repairs put on the boiler.

17. Q. Did not you, after the vessel got back to Galveston, assist in repairing the tubes of that boiler?

A. I did not, sir.

18. Q. Did you not enter on the slate, on the 6th of November, that you had expanded forty tubes in the boiler?

A. I have no recollection of it.

19. Q. Will you swear you did not?

A. I will.

20. Q. Then if Mr. Sherman swore to copying any such entry from the slate, he swore to what was not true, did he?

A. I could not say whether I entered that or not.

21. Q. If you did enter it on the slate, was it true or false?

A. If I did enter it, it must be true.

22 Q. Don't you that an expander was got to repair that boiler?

A. I knew that an expander was got; yes, sir.

23. Q. Question repeated.

A. I do.

24. Q. Don't you know that it was used to repair that boiler?

A. As near as I can recollect it was not used.

25. Q. Don't you know that it was broken in the use?

A. I can't say that I do.

26. Q. Don't you know that after the vessel returned to Galveston rods and caps were got to repair that boiler?

A. We got rods and caps to have a supply on hand.

397 27. Q. Question repeated.

A. Not that I know of; as near as I can recollect the vessel lay in Galveston about seven days after she went back.

28. Q. What were you doing during that time?

A. Keeping steam on the donkey boiler to keep the blower going.

29. Q. Is that all?

A. That is all I remember.

30. Q. Was the vessel ready for sea during all this time she was laying there?

A. Yes, sir; she was.

31. Q. Do you know of any reason, then, why she did not go to sea?

A. Yes, sir.

32. Q. Was it anything connected with the boiler?

A. It was.

33. Q. Don't you know that during part of that time you were waiting to get a tube expander?

A. Yes, sir.

34. Q. Do you know when that expander was got?

A. I don't recollect when it was got.

35. Q. Didn't you yourself use it after it was got?

A. No, sir; not to my recollection.

36. Q. Then, if Mr. Sherman has sworn that he saw you using it, he has sworn to what is not true, has he?

(Objected to.)

A. I don't have any recollection of using it, and I don't know whether he has sworn to it or not.

37. Q. Did you tell Mr. Sherman that the forty tubes which he had entered in the log as expanded had not been expanded?

A. I have no recollection of saying anything of the kind.

(Log-book shown witness.)

38. Q. Have you ever seen that book before?

A. No, sir; I don't remember ever having seen it before; I had nothing to do with it; it was none of my business.

398 39. Q. Did you have steam on the main boiler at any time after you came back to Galveston before the day you started again?

A. I have no recollection of having steam; not before the appointed time to go.

40. Q. Were any ferrules put in the back connection of that boiler while she was at Galveston the second time?

A. I have no recollection of any.

41. Q. Please read the entry on the 6th of November in the log; is that entry as to expanding tubes and putting in ferrules correct or not?

A. I have no remembrance of that repair at all.

42. Q. What was done on the boiler during the seven days that you lay in Galveston?

A. I have no remembrance of anything doing on the boiler whatever.

43. Q. Did you or Mr. Sherman have charge of any repairs on the boiler during that time?

A. Not as I remember—neither.

44. Q. Did not you put a ferrule, after you got back to Galveston, into the tube which you say dripped when you went back?

(Objected to.)

A. I don't remember anything of the kind; I would not be sure which meal it was I ate of the beef on the first day out from Galveston the second time; I think it was dinner; I have no recollection whether the rest ate of it; we had it on the table after that, as near as I can recollect; I am pretty sure of it; I think we had it on the table all the way to Key West; I am not positive whether we had it on the table after we left Key West; I have no recollection of being in the refrigerated room after the meat was all put in until we got up to Hatteras.

45. Q. When you speak of the refrigerating apparatus not being properly put in, what do you mean?

399 A. I mean by the blower engine not being put in properly—that is, so as to keep the belt from running in the water—and not proper means used to carry the water away; the difficulty was in the blower room, where the blower and blower engine were; I have not talked with Mr. Sherman about this matter since the voyage; I saw Mr. Towner a couple of days ago; we talked about things in general; I saw Mr. Stillman in this office, and also Woodhouse & Rudd's office; I have never talked it over with anybody else connected with the Francis Wright; I am now running a steam yacht for Charles A. Cheesbrough; I was subpœnaed to come here.

46. Q. Have you any recollection of any repairs being done to that boiler from the time she left Philadelphia until the time she returned?

A. I recollect plugging up one tube or two in Key West, and also the first night out from Galveston; then we calked some tubes; I could not say how many; that is all the repairs I remember during the voyage; I can't say that I remember whether I ever got steam on the donkey boiler while I was on watch; if I did, think very likely it would have been entered on the slate; I might have forgotten to enter it on the slate; I never have read any entry in Mr. Sherman's log until today to my recollection.

Redirect:

Mr. Wilson, Mr. Reeder, and Captain Dennison were present at different times while the meat was being put in the refrigerated room, and

all had something to say in giving directions; I could not say exactly who employed me on that Sunday to cut up the meat; it might have been Mr. Reeder or Mr. Zane.

47. Q. Was you employed to do anything more than to cut up the meat?

(Objected to.)

A. I volunteered to cut the meat.

400 48. Q. Question repeated.

A. I was not; I was paid extra for that service; I was employed to cut it up—to get the meat aboard as soon as possible, and because they could not get another man.

49. Q. You say you remained in Galveston seven days for some reason connected with the boiler; what was that reason?

A. Waiting for an expander.

50. Q. State, if you know, who sent for the expander.

A. As near as I can recollect, it was Captain Dennison and Mr. Sherman, the two head men of the ship. I don't know which one sent for it.

51. Q. When you speak of repairing the boiler, what do you mean?

A. I mean fixing the boiler. Hard patching and soft patching.

52. Q. Do you call plugging up or expanding the tubes repairing the boiler?

A. No, sir; I call this an every day occurrence. I mean plugging up tubes on this steamer, or any other steamer that I ever was on, more or less. The leaking of the tubes did not affect the steaming of the boiler.

53. Q. What proportion of the tubes could be plugged up without affecting the working power of the boiler so as to be shown in the diminution of the speed in the vessel?

A. Plugging up a tube makes a little less draft, that is all.

54. Q. Was any part of the car loads of meat that were kept standing all night cut off and thrown away as putrid?

A. There was considerable; different parts of the meat.

Recross:

I did not cut it off; the butcher did the trimming. Both the butcher and I were cutting the beef, but I did none of the trim-

401 ming—I mean the trimming, cutting off the bad, fly blows, &c.; on the meat that I cut the trimming was done after I cut it. I was paid extra. I think Captain Dennison sent the money on to New York, and I got it from Mr. Towner; I don't remember how much it was.

PHILIP H. HOFFMAN.

Subscribed and sworn to before me this 22d day of October, 1874.

EDWARD L. OWEN,
U. S. Commissioner.

402 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Wednesday, the 22d day of May, in the year of our Lord one thousand eight hundred and seventy-eight.

Present, the honorable Ward Hunt, Associate Justice of the Supreme Court of the United States.

JACOB M. DUNCAN AND SIMON POEY, LIB'L'TS & app'l'ts,
vs.
THE STEAMER FRANCIS WRIGHT, HER TACKLE, &c., Humphrey E. Woodhouse, and Joseph Rudd, jr.

The above entitled cause coming on for hearing on appeal from the decree of the district court,

Mr. J. Warren Coelston is heard on behalf of libellants and appellants.

Mr. Wm. Allen Butler is heard on behalf of claimants & appellees.

Court adjourned to 23d inst. at 11 a. m.

403 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Thursday, the 23d day of May, in the year of our Lord one thousand eight hundred and seventy-eight.

Present, the honorable Ward Hunt, Associate Justice of the Supreme Court of the United States.

JACOB M. DUNCAN ET AL., LIB'L'TS & APP'L'TS,
vs.
THE STEAMER FRANCIS WRIGHT, &C.

The hearing on appeal of the above cause being resumed.

Mr. Wm. Allen Butler continues his argument on behalf of claimants & appellees.

Mr. R. D. Benedict is heard on behalf of libellants & appellants.

Curia advisari vult.

404 At a special term of the circuit court of the United States for the southern district of New York, in the second circuit, held at the court-rooms in the city of New York, on the 17th day of July, 1878.

Present, the honorable Ward Hunt, circuit justice.

JACOB DUNCAN AND SIMON POEY, LIBELlants,
vs.
THE STEAMSHIP FRANCIS WRIGHT, HER engine, &c., and Humphrey E. Woodhouse and Joseph Rudd, jr., claimants & respondents.

This cause having duly come on to be heard on the pleadings and proofs herein on the appeal of the libellants, after hearing Robert D. Benedict for the libellants and appellants, and William Allen Butler for the claimants and respondents, it is now, on motion of Butler, Stillman & Hubbard, proctors for the claimants and respondents, ordered, adjudged, and decreed that the decree of the district

405 court dismissing the libel be affirmed and that the said libel be, and that it hereby is, dismissed, and that the claimants and respondents recover their costs awarded to them in the district

$345.26. court amounting to three hundred and forty-five $\frac{26}{100}$ dollars, together with their costs in this court, taxed at four hundred and

$446.75. forty-six $\frac{75}{100}$ dollars, amounting in all to the sum of seven

$792.01. hundred and ninety-two $\frac{01}{100}$ dollars, judgment is hereby

rendered against the libellants and appellants, Jacob M. Duncan and Simon Poey, and in favor of Humphrey E. Woodhouse and Joseph Rudd, jr., claimants and respondents.

And on like motion it is further ordered that unless this decree be fulfilled or satisfied, or unless proceedings thereon be stayed on appeal by filing security within ten days after service of a copy of this decree upon the proctors for the libellants, the stipulator on the appeal to this court cause the engagements of his stipulation to be performed or show cause within four days after the expiration of the said ten days or on the first day of jurisdiction thereafter why execution should not issue against him, his goods, chattels, and lands.

406

WARD HUNT,
Asso. Justice Sup. Ct. U. S.

(Endorsed:) U. S. court, southern district of New York. Jacob M. Duncan and Simon Poey, lib'ts, vs. The Francis Wright, her engines, &c., &c. Final decree. Butler, Stillman & Hubbard, proctors for resp'ts, No. 111 Broadway, New York. Within decree approved as to form and amount. N. Y., July 15, 1878. Benedict, Taft & Benedict, lib'lts proct's. U. S. circuit court. Filed Jul. 17, 1878. John I. Davenport, clerk.

407 *Bill of exceptions.*

U. S. circuit court for the southern district of New York, in the second circuit.

JACOB M. DUNCAN & SIMON POEY, Libellants & appellants,
against
THE STEAMER FRANCIS WRIGHT, HER TACKLE, &c., Humphrey E. Woodhouse and Joseph Rudd, claimants and appellees.

This cause came on for trial before the Hon. Ward Hunt, associate justice of the Supreme Court of the United States, at a term of the circuit court of the United States in and for the southern district of New York, in the second circuit, on the twenty-second and twenty-third days of May, 1878, on the appeal by the appellants from the final decree of the district court of the United States for the southern district of New York dismissing the libel herein with costs.

Counsel for the libellants read the libel and counsel for the
408 claimants read the answer as the same were contained in the apostles transmitted from said district court to said circuit court.

Counsel for libellants then put in evidence the testimony taken and the depositions read on behalf of libellants in the district court as the same were contained in the apostles, it being considered that the counsel for libellants read the direct examination and that counsel for claimants read the cross-examination.

Counsel for libellants also put in evidence the depositions of the following witnesses taken in the circuit court and on file in the said circuit court, viz: Horatio G. Zane, Robert J. Perry, Charles Tift, Stephen W. Baldwin, Joseph B. Brown, Alfred W. Collins, Edward B. Rawson Oscar J. Parker, John H. Gregory, Simon Poey, Edward W. Wilson, John H. Lockhardt, James J. Connor, James F. Mathews, Horatio G. Zane, No. 2, Jacob M. Duncan; it being considered that said counsel for
409 libellants read the direct and that counsel for the claimants read the cross examination.

Counsel for the claimants then put in evidence the testimony taken and the depositions read on behalf of claimants in the district court as the same were contained in the apostles, it being considered that the counsel for claimants read the direct, and counsel for libellants read the cross, examination.

Counsel for claimants also put in evidence the depositions of the following witnesses taken in the circuit court and on file in the said circuit court, viz: Henry C. Reeder, John A. Sherman, William A. Russell, John S. Goetschins, Philip H. Hoffman, it being considered that said counsel for claimant read the direct, and that counsel for libellants read the cross, examination.

All objections to evidence noted in said testimony and depositions, whether made by libellants or by claimants, were decided in favor
410 of the libellants & appellants.

And here the testimony was closed.

Counsel for libellants thereupon proposed on their behalf the following findings of fact and conclusions of law to be found by the court, viz:

Findings of fact and conclusions of law proposed by the libellants.

U. S. circuit court.

JACOB M. DUNCAN ET AL.
vs.
THE STEAMER FRANCIS WRIGHT.

First. On or about the 13th of September, 1872, the charter alleged in the libel was made as in said libel alleged.

Second. Before and at the time of the making of said charter, the owners of said steamer were informed that the purpose for which
411 the libellants desired to charter the said vessel was to bring a cargo of fresh beef from Galveston, in Texas, to Philadelphia; and they knew that it was essential to the successful prosecution of such a voyage that there should be no delays in said voyage by reason of unseaworthiness of said vessel or any part of her.

Third. The vessel sailed under the charter from Philadelphia to Galveston on the 3d of October, 1872, and arrived at Galveston on the 17th of October, 1872.

Fourth. At the time she started from Philadelphia the boiler of said steamer was not in good and seaworthy condition.

Fifth. On the voyage from Philadelphia to Galveston there
412 were several stoppages of said steamer, which were due to the unseaworthy condition of said boiler.

Sixth. At Galveston the libellants caused to be put on board said vessel a cargo of fresh beef, which was then in good condition, and which was shipped from October 22d to October 29th.

Seventh. On October 31, at 11 a. m., the steamer got under way from Galveston.

Eight. The main boiler of the steamer, when she got under way from Galveston, was in an unseaworthy condition.

Ninth. On the 1st of November the steamer was compelled to put back to Galveston owing to such unseaworthy condition of the said boiler.

413 Tenth. After the return of the vessel to Galveston repairs were put on said boiler, part of which consisted of the expanding of forty tubes. Such repairs were completed on the 6th of November.

Eleventh. On the 7th of November the steamer sailed from Galveston for Philadelphia; on the 14th of November she put in at Key West, and on the 15th sailed again, and on *Octo*ber 23d she arrived at Philadelphia.

Twelfth. The voyage of the said steamer from Galveston to Philadelphia could have been performed in about eleven days, including the stoppage at Key West, if there had been no delays by reason of the unseaworthiness of said boiler.

414 Thirteenth. If said voyage had been performed without unnecessary delay the said cargo would have arrived in Philadelphia in good condition, but owing to the delay caused by the unseaworthy condition of said boiler the whole of said cargo became spoiled, and was necessarily thrown overboard.

Fourteenth. The vessel was not kept fitted and provided with every requisite for such a voyage, by reason of which delays were occasioned in its prosecution.

Fifteenth. By reason of the unseaworthy condition of the boiler hot water was allowed on several occasions to run into the bilge of the ship, which hastened the destruction of the cargo.

415 Sixteenth. The vessel was not provided with extra boiler tubes, or with a tube expander, such as were requisite for such a voyage.

CONCLUSIONS OF LAW.

The vessel is responsible for the damages occasioned to the libellants by reason of the aforesaid failure of her owners to keep their covenant, that said ship should be kept tight, staunch, well fitted, tackled, and apparelled with every requisite.

Such damages consisted in the destruction of the cargo put on board.

The libellants are entitled to recover of the said vessel the value of said cargo when shipped.

BENEDICT, TAFT & BENEDICT,
Libellants' Proctors.

Counsel for libellants also proposed the following additional findings to be found by the court:

416 U. S. circuit court.

JACOB M. DUNCAN ET AL.
vs.
THE STEAMER FRANCIS WRIGHT.

The libellants request the court to find the following additional facts:

1. That on the voyage from Philadelphia to Galveston, on the 6th of October, a tube of the boiler of the Francis Wright leaked and was plugged. On the 8th of October, at 2 o'clock in the morning, a leak was discovered in the boiler, and at 9.30 the ship was stopped, the tubes swept, the connections cleaned, and the two tubes were stopped with rods and caps.

On the 12th of October a tube of the boiler leaked, the vessel was stopped, and the tube was stopped up.

417 On the 13th of October a tube leaked, and was stopped up with a wooden plug. On the 17th of October the boiler was leaking, and tubes were plugged up.

2. That while the vessel lay at Galveston, on the 22d of October, eight

tubes of the boiler were stopped up. On the 25th of October the boiler leaked, and two tubes were stopped up.

3. On the 31st of October the steamer got under way from Galveston at 11 a. m. At 4.30 p. m. the boiler was discovered to be leaking, and at 7 p. m. the vessel was stopped for repairs to the boiler, twenty-six tubes of which were found to be leaking.

On the morning of November 1st all the tubes were stopped but one, and the vessel put back to Galveston.

418 4. The engineer did not, at the time the vessel put back to Galveston, have sufficient tools to repair the tubes properly.

5. After the vessel returned to Galveston the boiler was there repaired, and forty of the tubes were expanded by a tube-expander procured for the purpose.

6. On the voyage from Galveston to Philadelphia, on November 10th, a tube of the boiler leaked and was plugged. On Nov. 13th a tube leaked, and was on the 14th stopped up with a rod and cap. On Nov. 16th a tube leaked. On Nov. 17th a tube leaked. On Nov. 18th the vessel was stopped on account of the boiler tubes leaking, and three tubes were stopped up with rods and caps. On the 21st the ves-

419 sel was also stopped on account of the boiler tubes leaking, and three tubes were stopped up, and on the 23d one tube was stopped up at Delaware City.

BENEDICT, TAFT & BENEDICT,
Libellants' Proctors.

(Endorsed:)

Messrs. Butler, Stillman & Hubbard.—Within is a copy of additional requests to find, which we intend to forward to Judge Hunt.
July 2d, 1878. Yours, &c.,
BENEDICT, TAFT & BENEDICT,
Libellants' Proctors.

Service of a copy of the within requests and notice is hereby admitted July 2d, 1878.
BUTLER, STILLMAN & HUBBARD.

The request for additional findings is denied.
WARD HUNT.

The court filed with the clerk of said circuit court the findings of fact and conclusions of law as found by the court in the form following, viz:

420 U. S. circuit court, southern district of New York.

JACOB M. DUNCAN AND SIMON POEY, libellants and appellants,
against
THE STEAMER FRANCIS WRIGHT, HER TACKLE, etc., Humphrey E. Woodhouse and Joseph Rudd, junior, claimants and appellees.

I find the following to be the facts:

FINDINGS OF FACT.

First. That, on the 13th day of September, 1872, the claimants, Woodhouse and Rudd, as owners of the steamer Francis Wright, entered into

a contract of charter party with the libellants, Messrs. Duncan and Poey, of Philadelphia, for the charter of said vessel, which charter
421 party is correctly set forth in Exhibit A, annexed to the libel.

Second. That the said charter party constituted the entire contract between the parties therein named in reference to the hiring and use of said steamer; that before and at the time of making the charter the owners of the steamer were informed of the purpose for which the libellants desired to use the vessel, to wit, to bring a cargo of fresh beef from Galveston to Philadelphia.

Third. That under and in pursuance of said charter party the libellants took possession of said steamer, the whole of which, with the exception of the necessary room for the sails and cables, was thereafter and during the employment of said vessel under said charter party, at the sole use and disposal of the charterers.

422 Fourth. That the libellants asked and obtained permission from the claimants, as owners of said steamer, to make certain alterations in her for the purpose of fitting up the hold of said vessel as a refrigerating room for preserving a cargo of fresh beef, and of connecing therewith apparatus and appliances for the use of a certain process for preserving fresh beef under a patent known as "Bray's Patent Refrigerator," and the libellants did, under such permission, make alterations in said steamer, and fitted up said hold as a refrigerating room, and connected therewith certain machinery and apparatus for use under said patent.

Fifth. That, among other things, in making said alterations and fitting up said steamer, an ice-house was constructed over the
423 hold and a hole was cut in the deck for the purpose of admitting a belt, to be worked in connection with a fan or blower, driven by steam, to produce a continuous current of air through the refrigerating room.

Sixth. That the working of said apparatus and machinery for the purpose of preserving a cargo of fresh beef, to be placed in said refrigerating room, required the use of steam, independently of the steam necessary for propelling the steamer on her voyage.

Seventh. That the voyage of said steamer under said charter was an experimental voyage, undertaken by the libellants and others interested with them in the use of said patent for the purpose of testing the
424 same, and before making definite or final arrangements in reference to the use of said patent. That the success of said experiment depended upon maintaining a uniform temperature in the refrigerating room of about forty-eight degrees Fahrenheit, and also upon keeping said room dry and free from wet or damp.

Eight. That the libellants dispatched the said steamer from Philadelphia to Galveston, Texas, laden with a general cargo of merchandise.

Ninth. That at Galveston the said libellants took on board a cargo of about seventy tons of fresh beef; that the bulk of said cargo was laden on said steamer within a few hours after the beef was killed, but
425 that in respect to two car-loads, containing a large quantity of beef, the same arrived at the vessel on Saturday afternoon, and was suffered and allowed by libellants to remain in the cars over night, and was not laden on board of said steamer until the following day, and the loading thereof was not completed until the evening of said following day; that the weather at the time was very warm, the temperature being in the neighborhood of ninety degrees Fahrenheit; said beef was shipped on board said vessel from the 22d to the 29th of October, and was in good condition when it was so shipped.

Tenth. That after taking on board said cargo of fresh beef, said steamer proceeded on her return voyage from Galveston to New York,
426 touching at Key West for a supply of coal and ice; that when said steamer left Galveston she had about one hundred and fifteen tons of ice in the ice-house; that soon after leaving Key West the said beef was discovered to be bad, and on the 3d day from Key West part of it was thrown overboard as spoiled and wholly worthless, and afterwards the residue was thrown overboard. The cargo of beef was a total loss.

Eleventh. That the spoiling of said beef and the consequent damage to libellants was caused by the defective construction and working of the refrigerating room and apparatus and machinery connected therewith, either from inherent defects in said apparatus or from not
427 using a sufficient quantity of ice, and not by any fault of the claimants.

Twelfth. That the claimants, as owners of said steamer, kept and performed all of the covenants and undertakings in the said charter party contained on their part, and that the said vessel, in and during said voyage, was kept tight, staunch, well-fitted, and tackled, and provided with every requisite for the voyage.

Thirteenth. That the libellants had notice and knowledge at the time of entering into said charter party that the said steamer had a tubular boiler, and had knowledge at Galveston, before taking on board said cargo of fresh beef, that tubular boilers were liable to leakage in the tubes, which did not interfere with the capacity or fitness of the boiler for the purposes of navigation.

428 Fourteenth. That the chief engineer of said steamer was, by the terms of the charter party, nominated by the owners of the vessel and appointed by the libellants.

Fifteenth. The boiler of the Wright was a tubular boiler, consisting of 144 tubes; a number of these tubes from time to time gave out, and was plugged up. and when the vessel arrived at Philadelphia 26 tubes had been plugged up, but I find that the boiler was still efficient and seaworthy.

Sixteenth. The said vessel occupied two days more time than is usually occupied by well-equipped steamers in her voyage from
429 Galveston to Philadelphia. She was also put back for repairs, by which a week's time was lost at Galveston.

CONCLUSIONS OF LAW.

First. That the covenant in the charter party on the part of the claimants as owners of the steamer that the vessel in and during the said voyage should be kept tight, staunch, well fitted, tackled, and provided with every requisite for the voyage, was a covenant of seaworthiness of the steamer for the purposes of navigation only for the voyage, and did not impose upon the libellants any duty or obligation in reference to any special or peculiar use to which the libellants saw fit to put the steamer.

Second. That under the said charter party the claimants, as
430 owners of the said steamer, were liable only in case of a breach of the covenant of seaworthiness for such damage as was the direct and natural result thereof.

Third. That libellants, having failed to prove that the damage to the cargo of fresh beef on said steamer was the direct and natural result of any breach of the covenant of seaworthiness in said charter party, are not entitled to recover such damages in this action.

Fourth. That the libellants having the sole use and disposal of the steamer under the charter party, and having seen fit to make alterations in her and fit her up for a special purpose, and for the purpose of trying an experiment in preserving a perishable cargo by a patented process never before applied upon a similar scale, incurred
431 all the risks incident to the making of such experiment.

Fifth. That such experiment being for the purpose of preserving a perishable cargo liable to spoil from causes not incident to navigation, and which could only be preserved by the successful use of a patented process and apparatus, the working of which was wholly under the control of libellants, and the defective construction and working of said apparatus having caused or contributed to the damage to the cargo, the owners of the vessel cannot be made liable for such damage.

Sixth. That the claimants are entitled to an affirmance of the decree of the district court dismissing the libel with costs.

WARD HUNT,
Ass. Justice Supreme Court U. S.

432 And also filed with said clerk his opinion as follows, viz:

The opinion of Mr. Justice Hunt.

U. S. circuit court, southern district of New York.

JACOB M. DUNCAN ET AL., LIBELLANTS AND appellants,
vs.
THE STEAMER FRANCIS WRIGHT AND OTHERS, claimants and appellees.

The findings of fact and the conclusions of law required by the statute have been made in this case so fully and so much in detail, that little is required in the way of illustration.

There are, however, a few points of law and some statements of fact, about which further suggestions may well be made.

First, as to the covenant of the owners that "the said vessel in and during the said voyage shall be kept tight, staunch, well fitted,
433 tackled, and provided with every requisite for such a voyage."

This is a covenant of seaworthiness of the vessel for the purpose of navigation in the ordinary manner. It is not a covenant that the vessel is, and shall be, in a condition to transport fresh beef from Galveston to Philadelphia without injury. It is true that the owners were informed that the charterers preferred to transport such a cargo, and that they gave permission for the making of certain alterations with a view to the traffic. It was a permission merely in relation to which no responsibility was assumed by them. If the charterers had said: we desire to have a vessel whose qualities and equipments are such that they will ensure the safe transmission of this cargo from Galveston to Philadelphia, and we will have the charter party drawn so as to cover that purpose; no one can suppose that the owners would have entered into the covenant. It would have been instantly rejected. The
434 proposition involved considerations entirely outside of navigation or seaworthiness.

The claimants contend that a breach of this covenant would not include the special and unusual damages arising from the the loss of a cargo of beef, the preservation of which depended upon causes not con-

nected with the navigation or seaworthiness of the vessel, but I have not found it necessary to pass upon this point.

Second. I have reached the conclusion, as a matter of fact, that the condition of the boiler on the voyage was not that of unseaworthiness. The evidence shows that there were delays and stoppages from time to time on account of the condition of the boiler or its inefficient management, and that some of its tubes were burst or plugged up. When the voyage was completed by the arrival of the vessel at Philadelphia on the 23d of November, 1872, twenty-six of the one hundred and forty-four
435 tubes of the boiler were plugged up. The boiler was, however, proved by many witnesses to be in good condition, both before sailing and after the return, and it was proved by experts that such was its condition, and that it was seaworthy and efficient, notwithstanding twenty-six tubes were not in use. There is nothing in the nature of the machines which compel a court to say that a boiler, which is made with one hundred and forty-four tubes, may not be well and efficiently operated by the use of one hundred and eighteen tubes. It may well be that the operation would be nearly as efficient in the one case as in the other. Much time was lost by the determination of the captain to put back to Galveston. This I regard as the act of the captain acting as the agent of the charterers, and as an unnecessary precaution. He insisted upon putting back unless the chief engineer would guar-
436 anty that no more tubes should burst before reaching Key West. The engineer insisted then and at the trial that the boiler was sufficient and could accomplish the voyage, but declining to make the guaranty, the vessel was put back and the delay incurred. I think this was an error on the part of the agent of the charterers for which the owners cannot be held responsible.

Third. There has been much testimony given as to the condition of the beef when loaded, and also as to its condition when it reached Key West, and much new testimony on that point has been given in this court. After a careful examination of the whole of it, I have found and decided that the beef was healthy and wholesome when it was loaded. I cannot believe that those who had charge of the loading, who personally supervised the whole of it, and who were personally interested in the success of the adventure, would have assented to
437 the shipping of any beef which was then unsound. It would be a betrayal of their owners' interests and an abandonment of their own interests not to be admitted except upon evidence impossible to overcome. The evidence as to its condition at Key West and afterwards is chiefly important as bearing upon its condition when it was shipped.

Fourth. The great question of fact is, what caused the destruction of the beef?

It was loaded at Galveston in good condition from the 22d of October, 1872, to the 29th of the same month. Without giving the detail of dates, it is sufficient to say that the vessel reached Key West on the 14th of November; left there on the day following. Within two or three days thereafter the beef was discovered to have become bad. A part of it was then thrown overboard, the rest of it afterwards, and it be-
438 came a total loss. The vessel reached Philadelphia on the 23d of November, 1872.

The libellants charge the loss to two causes: The delay caused by the inadequacy and insufficiency of the boiler, to which is attributed the numerous stoppages and the putting back to Galveston, as has been already stated, by means of which long delay the beef became spoiled. The other cause is the leakage of hot water from the boiler into the

bilge under the refrigerating room, by means of which, it is said, the floor became heated and the temperature of the room so much raised that the beef yielded to the effect of the heat and became worthless.

The voyage in question and the adventure which was its basis were experimental. Such is the explicit statement of the parties interested. An invention had been made and a patent obtained, of which they were the owners, by which the heat of the southern latitudes was to be
439 excluded and a temperature on ship-board attained which would permit the transportation of fresh meat and vegetables uninjured from the South to the North. The steamer Fire Fly, it was said, had successfully made such a voyage.

A company was organized, the steamer Francis Wright was chartered, the owner of the patent was appointed her captain, the refrigerating apparatus was put into her, and she sailed for the tropical port of Galveston, Texas. This idea of transporting fresh meat was then in its infancy, and the successful efforts which have since been made were then unknown, and we may safely presume that the machinery now in use is much in advance of that used by the libellants. If they succeeded their patent would be of value and the voyage profitable; but it failed, and a great loss followed.

I am of the opinion that the delays and consequent length of
440 the voyage was not the cause of the loss of the beef in the sense in which the claim is made. In latitude 29, in the month of October, the charterers knew that fresh meat would decay with great rapidity unless science and the arts should counteract the tendencies of nature. This they undertook to accomplish by introducing into the vessel a refrigerating apparatus, packing in the hold where the beef was kept large quantities of ice, and making a circulation of air kept at the temperature of 38° or 40° of Fahrenheit through the layers of beef. So long as this temperature could be maintained the beef would remain sound. This was the theory of the patent, and was correct in principle. The chief witness for the libellants testified that from his experience it could be so kept for thirty days. I see no reason for limiting it to thirty days, nor why it might not be continued for a very much longer time. If a piece of beef is subjected to a temperature by which
441 it is frozen, the experience of any one tells him that so long as it remains frozen, putrefaction is avoided. The theory of the libellants, which seems to be sound, was that air at the temperature of 38° or 40° kept in motion around the beef would produce the same result, and according to their evidence, on this occasion it was kept sweet and sound by this process from October 22d until November the 17th (three days out from Key West), when putrefaction occurred, a period of twenty-four days. If the same temperature and the same circulation had been kept up until the 23d, when the vessel reached Philadelphia, the beef would have then been in good condition. Time in itself is not, in my opinion, an element in the transaction. Everything depends upon the fact whether or not the temperature desired is maintained, and upon that fact alone. We come, then, to the remaining cause of com-
442 plaint against the worthiness of the boiler, to wit, that it leaked, that the hot water from it trickled down the face of the boiler, made a wet spot in front of it, and ran down into the bilge under the refrigerating-room, heating the floor, and thus rendering it impossible to maintain the proper temperature in that room. It was proved by many witnesses that at various times water was thus seen to run down the face of the boiler, and if there was enough thus escaping to make a current, I cannot doubt that it ran into the bilge.

The circumstance that the vessel was a foot or eighteen inches lower by the heel than the head, which at first struck me as important, I am satisfied, upon reflection, is quite immaterial. In a sea-going vessel, where the up and down motion, lifting first the bow and then the stern ten or fifteen feet, there must be a great rushing backwards and
443 forwards of all the water in the hold or bilge, and a thorough intermixture. If there was hot water enough to produce an effect, the circumstance that when on a level the stern was a foot or two lower than the bow, where the refrigerating room was located, is of no importance.

But I am satisfied that the quantity of hot water thus escaping into the bilge was entirely insufficient to produce the result claimed, or any effect whatever upon the temperature of the refrigerating room. It was a mere trickle and was occasional only, and if there had been nothing to counteract it, the effect would not have been appreciable.

But the drain from the ice-box was large and constant. Between Galveston and Key West, ten tons of ice per day, according to the evidence, were melted in this box, the water from which ran into the bilge under the refrigerating room. This water was chilled to the high-
444 est degree consistently with its being water. It had merely escaped from the condition of ice with that of water when it passed into the bilge. It is testified that sixty-four cubic feet of ice make a ton, and the cold water from ten times this quantity each day would create in the bilge a chill and coldness immensely greater than the opposite effect by the trickling of hot water from the boiler. One witness testified that there were ten holes into the bilge of 6 inches by 2 inches each, through which the water ran from the ice-box. Mr. Zane denies this, but says there were augur holes through which the water ran. The form or size of the holes is not very important, as it is proved on the part of the libellants that from Galveston to Key West, about ten tons of ice were consumed each day, and that the water from this melting ice passed into the bilge. This would give about two thousand four hundred gallons of the coldest of water running daily
445 into the bilge. Under these circumstances I think the theory that the hot water from the boiler passed into the bilge, heated the floor of the refrigerating room, and thus increased the heat of the room, tending to aid the decay of the beef, has no foundation in fact.

I am of the opinion, and have found as a matter of fact, that the destruction of the beef was not owing to any cause for which the owners of the vessel were responsible.

A defective principle in the refrigerating machinery would account for it, or a defective operation or management of an apparatus founded on sound principles, or the want of a sufficient quantity of ice would explain it.

So long as it is not attributable to defects in the boiler or other unseaworthiness of the vessel or its equipments, for which the owners are chargeable, it is not here necessary to decide what the difficulty was, and I do not pursue the investigation.

446 Upon the whole case, I am of the opinion that the libellants have failed to establish their case, and that the decree dismissing the libel must be affirmed with costs.

(Signed) WARD HUNT.

And the court refused to find each of the libellants' requests to find and additional requests to find not found in the findings of the court.

And thereafter, upon notice and before judgment or decree, counsel

for libellants filed in the office of said clerk, and served upon claimants' proctors, exceptions to said findings of the court and to the refusals of the court to find as follows, viz:

Exceptions on behalf of the libellants to findings and refusals to find.

U. S. circuit court.

JACOB M. DUNCAN ET AL.
vs.
447 THE STEAMER FRANCIS WRIGHT.

The libellants herein except to the findings herein as follows:

First. They except to the finding that the said charter-party constituted the entire contract between the parties therein named in reference to the hiring and use of said steamer.

Second. They except to the finding that the whole of said steamer with the exception of the necessary room for the sails and cables was thereafter and during the employment of said vessel under said charter party, at the sole use and disposal of the charterers.

Third. They except to the finding that the voyage of said steamer under said charter was an experimental voyage, undertaken by the
448 libellants and others interested with them in the use of said patent, for the purpose of testing the same & before making definite or final arrangements in reference to the use of said patent.

Fourth. They except to the finding that the success of said experiment depends upon maintaining a uniform temperature in the refrigerating room of about forty-eight degrees Fahrenheit and also upon keeping said room dry and free from wet or damp.

Fifth. They except to the finding that two car loads, containing a large quantity of beef, arrived at the vessel on Saturday afternoon and were suffered and allowed by libellants to remain in the cars over night, and were not laden on board of said steamer until the following day, & the loading thereof was not completed until the evening of the said following day.

Sixth. They except to the finding that on the third day from Key West part of said beef was thrown overboard as spoiled and wholly worthless.

449 Seventh. They except to the finding that the spoiling of said beef and the consequent damage to the libellants was caused by the defective construction & working of the refrigerated room & apparatus & machinery connected therewith, either from inherent defects in said apparatus or from not using a sufficient quantity of ice, and not by any fault of the claimants.

Eight. They except to the finding that the claimants as owners of said steamer kept or performed all of the covenants and undertakings in the said charter party contained on their part, and that the said vessel in and during the said voyage was kept tight, staunch, well fitted, & tackled & provided with every requisite for the voyage.

Ninth. They except to the finding that the libellants had knowledge at Galveston, before taking on board said cargo of beef, that tubular boilers were liable to leakage in the tubes.

Tenth. They except to the finding that leakage in the tubes
450 did not interfere with the capacity or fitness of the boiler for the purposes of navigation.

Eleventh. They except to the finding that when the vessel arrived at Philadelphia the boiler was still efficient and seaworthy.

Twelfth. They except to the finding that the vessel occupied only two days more time than is usually occupied by well equipped steamers in her voyage from Galveston to Philadelphia.

Thirteenth. They except to the finding that the covenant in the charter party on the part of the claimants as owners of the steamer that the vessel in and during the said voyage should be kept tight, staunch, well fitted, tackled, and provided with every requisite for the voyage, was a covenant of seaworthiness of the steamer for the purpose of navigation only.

Fourteenth. They except to the finding that under the charter party the claimants as owners of said steamer were liable only in case
451 of a breach of the covenant of seaworthiness for such damage as was the direct and natural result thereof.

Fifteenth. They except to the finding that libellants have failed to prove that the damage to the cargo of fresh beef on said steamer was the direct and natural result of any breach of the covenant of seaworthiness in said charter party.

Sixteenth. They except to the finding that the libellants are not entitled to recover such damage in this action.

Seventeenth. They except to the finding that the libellants having the sole use and disposal of the steamer under the charter party and having seen fit to make alterations in her, and to fit her up for a special purpose & for the purpose of trying an experiment in preserving a perishable cargo by a patented process never before applied upon a similar scale, incurred all the risks incident to the making of such experiment.

Eighteenth. They except to the finding that such experiment
452 being for the purpose of preserving a perishable cargo liable to spoil from causes not incident to navigation and which could only be preserved by the successful use of a patented process and apparatus the working of which was wholly under the control of libellants, and the defective construction and working of said apparatus having caused or contributed to the damage to the cargo, the owners of the vessel cannot be made liable for such damage.

Nineteenth. They except to the finding that the claimants are entitled to an affirmance of the decree of the district court dismissing the libel with costs.

And the libellants also except to the refusal of the circuit judge to find as requested by them as follows:

They except to the refusal to find the second request.

They except to the refusal to find the third request.

453 They except to the refusal to find the fourth request.

They except to the refusal to find the fifth request.

They except to the refusal to find the seventh request.

They except to the refusal to find the eight' request.

They except to the refusal to find the ninth request.

They except to the refusal to find the 10th request.

They except to the refusal to find the 11th request.

They except to the refusal to find the 12th request.

They except to the refusal to find the 13th request.

They except to the refusal to find the 14th request.

They except to the refusal to find the 15th request.

They except to the refusal to find the 16th request.

They except to the refusal to find the conclusions of law requested, and each of them.

They except to the refusal to find the first additional request.
454 They except to the refusal to find the second additional request.
They except to the refusal to find the third additional request.
They except to the refusal to find the fourth additional request.
They except to the refusal to find the fifth additional request.
They except to the refusal to find the sixth additional request.

And thereafter a final decree was made by the court, affirming the decree of the district court, and dismissing the libel with costs.

And inasmuch as the said several matters produced and given in evidence on the trial in said circuit court, and by counsel for said libellants objected and insisted on; and the said exceptions do not appear by the record of the decree of said court, the counsel for said libellants
455 has prepared and caused this bill of exceptions to be settled as a record thereof, according to the form of the statute in such case made and provided, and the practice of the court, and to be signed and ordered on file.

WARD HUNT,
Ass. Just. Sup. Ct. U. S.

Approved as to form.

BUTLER, STILLMAN & HUBBARD.
Proctors for Francis Wright.

456 (Indorsed:) U. S. circuit court. Jacob M. Duncan & al ag't the steamer Francis Wright, &c. Bill of exceptions. Benedict, Taft & Benedict, app'l'ts' proctors, 64, Wall street, New York, U. S. circuit court. Filed Oct. 5, 1878. John I. Davenport, clerk.

457 Circuit court of the United States for the southern district of New York, in the second district.

JACOB M. DUNCAN & SIMON POEY, LIB'L'TS & appl'ts, *ag'st* THE STEAMSHIP FRANCIS WRIGHT, HER ENGINE, &c., Humphrey E. Woodhouse & Joseph Rudd, jr., cl'm'ts & appellees.

To the honorable the Supreme Court of the United States:

The appeal of Jacob M. Duncan & Simon Poey, the above-named libellants & appellants, respectfully shows:

That on the 21st day of December, 1872, they filed their libel in the district court of the United States for the southern district of New York, against the steamship Francis Wright, her engine, &c., in a cause civil and maritime, for the recovery of the damages by them sustained, by reason of the matters & things in said libel mentioned; that
458 said steamship was duly seized on process issued out of said court, and was discharged on the claimants and appellees filing their claim and entering into stipulations; that thereafter said claimants & appellees filed their answer in said cause, and such proceedings were thereafter had in said cause, that on the tenth day of January, 1874, a final decree was made therein, by said district court, wherein it was adjudged that the libel of the libellants be dismissed with costs; that thereafter these appellants duly appealed to the circuit court of the United States for the southern district of New York, and the said

cause was removed thereby into the said circuit court, and there heard anew; that such proceedings were thereupon had in said circuit court, that on the 17th day of July, 1878, a final decree was made by said court, whereby it was ordered and decreed that the decree of the district court herein be in all things affirmed with costs, which said decree of the said circuit court is, as these appellants are advised, erro-
459 neous, and ought to be reversed.

Wherefore these appellants appeal from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully pray that the decree of said circuit court & the libel, answer, pleadings, depositions, evidence, findings, proposed requests to find, and exceptions to findings, and refusals to find and all the other papers and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof may be reversed and a decree made in favor of the libellants and appellants, decreeing that they recover the damages claimed by them in their said libel, with costs, or that such other decree may be made as to said court shall seem just.

BENEDICT, TAFT & BENEDICT,
Proctors for Appellant.

E. C. BENEDICT, *Advocate.*

460 (Indorsed:) U. S. circuit court. Jacob M. Duncan & al. lib'l'ts & appellants, vs. The Steamship Francis Wright & als., cl'm't's and appellees. Appeal. Benedict, Taft & Benedict, lib'l'ts' proctors, 64 Wall street, New York. U. S. circuit court. Filed Sep. 12, 1878. John I. Davenport, clerk. For Butler, Stillman & Hubbard, esq'rs.

461 *Bond for Costs.*

Circuit court of the United States of America, for the southern district of New York, in the second circuit.

JACOB M. DUNCAN & SIMON POEY, libellants & appellants,
vs.
STEAMSHIP FRANCIS WRIGHT, HER engines, &c., Humphrey E. Woodhouse & Joseph Rudd, jr., claimants and appellees.

Know all men by these presents, that we, George M. Wright, of Bordentown, New Jersey, and Lyman G. Webster, of Westfield, Richmond County, New York, are held and firmly bound unto the above named Humphrey E. Woodhouse & Joseph Rudd, jr., in the sum of one thousand dollars, to be paid to the said Woodhouse & Rudd, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the second day of August, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas, the above named Jacob N. Duncan & Simon Poey have prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above entitled suit by the judge of the circuit court of the United States for the southern district of New York;

Now, therefore, the condition of this obligation is such, that if the above named appellants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

GEO. M. WRIGHT. [L. S.]
L. G. WEBSTER. [L. S.]

Sealed and delivered, and taken and acknowledged, this 2d day of Aug., 1878, before me as to Geo. M. Wright.

[L. S.] WM. D. JONES,
Not'y Pub. for Kings Co. Cert. filed in N. Y. Co.

& on the 9th day of Aug., 1878, as to Lyman G. Webster before me.

[L. S.] LOUIS C. LEWIS,
Notary Public, N. Y. Co.

462 UNITED STATES OF AMERICA,
Southern District of New York, ss:

George M. Wright, being duly sworn, deposes and says that he is worth the sum of two thousand dollars over and above all just debts and liabilities.

GEO. M. WRIGHT.

Sworn to this 2d day of Aug., A. D. 1878, before me.

[L. S.] WM. D. JONES,
Not'y Public for Kings Co. Cert. filed in N. Y. Co.

Approved Oct. 1st., 1878.

SAM'L BLATCHFORD,
Circuit Judge.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Lyman G. Webster, being duly sworn, deposes & says that he is worth the sum of two thousand dollars over & above all his just debts & liabilities.

L. G. WEBSTER.

Sworn to this 9th day of Aug., 1878, before me.

[L. S.] LOUIS C. LEWIS,
Notary Public, N. Y. Co.

(Indorsed:) U. S. circuit court. Jacob M. Duncan & al. vs. S. S. Francis Wright, her engine, &c. Bond for costs on appeal. Benedict, Taft & Benedict, app'ts' proctors, 64 Wall st. U. S. circuit court. Filed Oct. 1, 1878. John I. Davenport, clerk.

463 By the honorable Samuel Blatchford, judge of the circuit court of the United States for the southern district of New York, in the second circuit, to Humphrey E. Woodhouse & Joseph Rudd, jr.

Whereas Jacob M. Duncan & Simon Poey have appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in your favor against the said Jacob M. Duncan and Simeon Poey, and have filed the security filed by law.

You are, therefore, hereby cited to appear before the said Supreme Court at the city of Washington, on the second Monday of October, 1878, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, the first day of October, in the year of our Lord eighteen hundred and seventy-eight, & of the Independence of the United States the one hundred & third.

SAM'L BLATCHFORD.

464 (Endorsed:) U. S. circuit court. Jacob M. Duncan & al. v. S. S. Francis Wright, &c. Citation. Benedict, Taft & Benedict, app'ts' proctors, 64 Wall street, New York.

We admit due service of the within citation the same as if personally served on the parties therein named.

Oct. 1, 1878.

BUTLER, STILLMAM & HUBBARD,
Proctors for Francis Wright.

465 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 464, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Jacob M. Duncan & Simon Poey, libellants & appellants, against The Steamship Francis Wright, her engines, &c., Humphrey E. Woodhouse & Joseph Rudd, jr., claimants & appellees, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this ninth day of October, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the said United States the one hundred and third.

[SEAL.] JOHN I. DAVENPORT,
Clerk.

(Indorsement on cover:) No. 348. Jacob M. Duncan and Simon Poey, appellants, vs. The Steamship Francis Wright, her engine, &c., Humphrey E. Woodhouse & Joseph Rudd, jr., claimants. S. New York. C. C. U. S. Filed 25th November, 1878.

OFFICE SUPREME COURT U. S.
FILED
FEB 28 1882
JAMES H. McKENNEY, CLERK.

U. S. Supreme Court.

JACOB M. DUNCAN *et al.*,
Appellants,

vs.

THE STEAMSHIP FRANCIS WRIGHT,
HER TACKLE, ETC.

No. 102.

Brief and Points for Libellants and Appellants.

This is an appeal by the libellants from a decree of the Circuit Court of the United States for the Southern District of New York dismissing the libel.

Statement of the Case.

The libellants, on the 13th of September, 1872, chartered the steamship Francis Wright, of her owners, to run between Philadelphia and Galveston, for a term of six months or less. The charter was a written one (Record, p. 5) and contained the following provisions, among others, viz.: The owners agreed that the vessel "during the said voyage shall be kept tight, staunch, well fitted, tackled and provided for such a voyage."

Charterers were to man, coal and victual the steamer, and pay all expenses connected with running the steamer, "except insurance and repairs."

Owners were to take on board such lawful cargo as charterers should think fit to ship.

Owners were to nominate, and charterers to appoint, chief engineer, to be paid by charterers.

Charterers to appoint captain, subject to approval of owners.

The purpose of the charter was the bringing of a cargo of fresh beef in the steamer from Galveston to Philadelphia, which purpose was communicated by the charterers to the owners before the charter was made, and for which purpose the charterers obtained leave from the owners to put a refrigerating machine on board the steamer, and make certain alterations in her.

After the charterers received the vessel she made a voyage from Philadelphia to Galveston, where the charterers put on board a cargo of fresh beef to be brought to Philadelphia. The voyage was so prolonged that the cargo all spoiled and was thrown overboard.

The charterers claimed that this prolongation of the voyage was due to the unseaworthy condition of the boiler of the steamer. The boiler was a tubular boiler. During the voyage out to Galveston on several occasions the boiler leaked from the giving out of one or more tubes, which caused stoppages of the steamer for the purpose of plugging up tubes. While at Galveston a similar giving out of the boiler occurred twice, but no sufficient pains were taken to repair it. The vessel sailed from Galveston with her cargo of fresh beef on board, on the 31st of October, and within a very few hours from her leaving port, without any stress of weather, twenty-six out of the 144 tubes of the boiler gave out and the vessel put back to Galveston for further repairs, whereby a week's time was lost. Further delays took place on the voyage from the same causes, and before the vessel reached Philadelphia the cargo spoiled and was thrown overboard.

The libellants averred that but for these delays the vessel would have reached Philadelphia before the

beef was spoiled. They claimed that the delays resulted from the failure of the owners of the ship to keep the covenant in the charter that the ship should be "kept tight, staunch and well fitted, tackled and provided for such a voyage," and that the loss of the beef was a direct damage resulting to them from such breach of the charter.

The District Judge held that on these facts the boiler and the ship were not seaworthy, and that the covenant of the charter had not been kept by the owners of the ship. But he also held that the libellants had not established that the loss of the beef was due to the delay which resulted, but that it might have been due to a deficiency of ice on board the vessel when she left Key West, and on this ground he dismissed the libel. (See his opinion on pages 126 to 132.)

Additional testimony was taken in the Circuit Court on both sides. That Court affirmed the decree dismissing the libel, but on entirely different grounds. And from that decree of the Circuit Court the libellants have brought this appeal.

Errors Assigned.

1st.—The Circuit Judge erred in holding (First Finding of Law) that the covenant in the charter party that the vessel should be kept "tight, staunch, well fitted, tackled and provided with every requisite for the voyage," did not impose upon the libellants (claimants?) any duty or obligation in reference to any special or peculiar use to which the libellant saw fit to put the steamer.

2d.—The Circuit Judge erred in finding as in the third finding of law.

3d.—The Circuit Judge erred in finding as in the fourth finding of law.

4th.—The Circuit Judge erred in finding as in the fifth finding of law.

5th.—The Circuit Judge erred in finding as in the sixth finding of law.

6th.—The Circuit Judge erred in refusing to find each of the additional requests to find, there being as to each of them no conflict of evidence.

7th.—The Circuit Judge erred in that he did not, as required by the statute, find the facts and conclusions of law.

8th.—The Circuit Judge erred in that he did not find the facts and conclusions of law separately, but found a conclusion of law, as if the same were a fact.

First.

It will be insisted that, under the statute of 1875, this Court cannot look into the evidence in the cause, but must be confined to the questions of errors of law arising on the findings of fact made by the Circuit Judge.

But we insist, on the contrary, that to put such a construction upon that Act of 1875, would be to make it in that respect contrary to the Constitution of the United States. We say that, under the Constitution, the right was given to these libellants to have the appellate jurisdiction of this Court exercised in this case, *both as to law and fact;* and that Congress had no power to take that right away from them. And in support of this proposition we beg leave to present the following considerations :

1. The Constitution of the United States, Art. 3, § 2, provides that the Judicial power of the United States shall extend to the following cases :

    1. To all cases in law and equity arising under this constitution, the laws of the United States and treaties made or which shall be made under their authority.

2. To all cases affecting ambassadors and other public ministers and consuls.

3. To all cases of admiralty and maritime jurisdiction.

4. To controversies to which the United States shall be a party.

5. To controversies between two or more States, etc., etc.

It also provides that "in all cases affecting ambassadors, public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction."

And further, that "in all the other cases before mentioned the Supreme Court *shall have* appellate jurisdiction *both as to law and fact, with such exceptions and under such regulations* as the Congress shall make."

2. The Constitution must be treated as framed with the knowledge, on the part of the makers, of the division of legal controversies into the three great domains of common law, equity and admiralty.

The makers must be understood to have had in their minds a judicial system, covering each of those three domains, in each of which the Supreme Court was to exercise the final appellate jurisdiction, in each after its kind, *i. e.*, that in cases at law, the appellate power should extend to questions of law, while, in [illegible] and in admiralty, it should ex[illegible] both of law and fact. (See Bu[illegible]

Or, to state it in another [illegible] been intended that in all questions which were to be determined by the courts, as distinguished from the juries, the Supreme Court should be the supreme arbiter.

"Admiralty and maritime cases" being a class specified, the appellate jurisdiction, conferred on the Supreme Court in that class, must be that which belongs to the admiralty the world over, and has always belonged to it, viz., to review the decisions of the inferior Courts by appeal instead of writ of error. If there was any doubt of this, the insertion of the words "both as to law *and fact*" make it certain that this was intended; for an appeal in admiralty "removes the cause entirely, subjecting the fact as well as the law to a review and retrial." Wiscart *vs.* Dauchy, 3 Dall. 321.)

This same language is employed by Judge Story, in his discussion of this provision of the Constitution. (Story on Const., § 917.) "Appeals *ex vi termini* means the bringing up of every matter pending in the Court below." (3 Peters, 440. And see 22 How., 192; 11 How., 185.)

The Constitution then gives to every one who has an admiralty and maritime cause of action, a right to a hearing of his cause before an Admiralty Court and a right to have the Supreme Court hear his cause on an appeal, "with such exceptions and under such regulations as Congress shall make."

3. What then are the "exceptions" and what the "regulations" which Congress may lawfully make.

We may instance, as an exception which it may lawfully make, the exception of cases which do not involve more than a certain sum.

We may instance as a "regulation" which it may lawfully make, the regulation that an appeal shall be taken within such a time.

But, whatever exception or regulation it may make, it is not authorized under that exceptive clause to destroy the previous clause to which the exception is attached.

It would not be authorized to destroy the appellate jurisdiction of the Supreme Court. An Act of Congress saying that no cause of any kind should

ever be brought before the Supreme Court for review, would surely be held unconstitutional.

So, too, would be unconstitutional an Act providing that in all the classes of cases specified, *but one*, the appellate jurisdiction of the Supreme Court should not be exercised. The Constitution saying that the Court shall have appellate jurisdiction in *all the* five classes of cases, Congress would not be authorized to except any one class. It may except certain cases of all classes, but not all cases of any one class.

Congress, then, would not have the power to say that the Supreme Court should not have appellate jurisdiction of any admiralty and maritime cause. It may make exceptions among admiralty and maritime causes. It may say that a cause shall involve $5,000 in order to the party's having a right to invoke that appellate jurisdiction; but it cannot exclude all such causes from the Supreme Court.

The Supreme Court must have within the limits of its appellate jurisdiction admiralty and maritime causes, and in those causes the appellate jurisdiction which it has must be the appellate jurisdiction of the admiralty, viz., to hear the cause upon an appeal, which brings up the cause and brings before the appellate Court the fact as well as the law for a review and retrial.

4. Now the construction of the Act of 1875, to which we object, would destroy the appellate jurisdiction of the Supreme Court in all admiralty and maritime causes.

The result of such a construction would be that there shall be no review of questions of fact in admiralty causes by the Supreme Court. But an admiralty appeal subjects the fact as well as the law to a review and a retrial.

A hearing on an admiralty appeal is a new

trial, with the right to introduce new pleadings and new evidence.

The Roarer, 1 Blatch., 1.
Yeaton *v.* The U. S., 5 Cranch, 281.
The Alicia, 7 Wall, 571.
The Lucille, 19 Wall, 74.
Harris *v.* Wheeler, 8 Blatch., 84.

What the Constitution gave to these libellants therefore was not only a right to bring their suit in the Admiralty Court, but a right to the exercise of the appellate jurisdiction of this Court, that is, a right to a new trial of their cause in this Court,—a right to allege what had not been alleged and to prove what had not been proved,—a right to a rehearing on the fact as well as on the law.

That was, says Judge Story, "the object of this provision." There can be no higher authority as to the construction of the Constitution than that of Judge Story.

And in his discussion of this provision of the Constitution as to the appellate jurisdiction of this Court, he says, "*The real object of the provision was to retain the power of reviewing the fact as well as the law in cases of equity and admiralty and maritime jurisdiction.*"

Can it be allowed that Congress has the power, under the guise of a regulation or exception, to destroy that which it was the very *object* of this provision to *retain?*

To the above authority of Judge Story is to be added the high authority of the Federalist (Ed. of 1864, p. 604): "The appellate jurisdiction of the Supreme Court * * * will extend to causes determinable in different modes, some in the course of the *Common Law*, others in the course of the Civil Law. In the former the revision of the law only will be, generally speaking, the province of the Supreme Court.

> In the latter the re-examination of the fact is agreeable to usage, and in some cases, of which prize causes are examples, might be essential to the preservation of the public peace. It is therefore necessary that the appellate jurisdiction should, in certain cases, extend in the broadest sense to matters of fact."

It should be borne in mind that these words "both as to law and fact" were not in the provision of the constitution as at first proposed. The clause as at first proposed read "In all the other cases before mentioned it shall be appellate with such exceptions and under such regulations as the Legislature shall make."

Madison Papers, 5 Elliott s Debates, p. 380.

If the provision had been left to stand in that way it would seem to be clear that the "exceptions" must be such as took one case or another out of the jurisdiction of the Supreme Court, and could not affect the appellate jurisdiction of the Court over such cases as were not excepted.

The words "both as to law and fact" were then inserted by unanimous agreement. (Id., p. 483.) It seems clear that they were inserted, not to modify the exceptive clause, but to make definite, if not to enlarge, the word "appellate.

5. This clause of the constitution was before this Court for consideration in the case of Durousseau *v.* The United States (6 Cranch, 313), and Marshall, Ch. J., uses in that case the following language:

> "It is contended that the words of the constitution vest an appellate jurisdiction in this Court, which extends to every case not excepted by Congress, and that if the Court had been created without any express definition or limitation of its powers, a full and complete appellate jurisdiction would have vested in it, which must have been exercised in all cases whatever.

> "*The force of this argument is perceived and admitted.* Had the judicial act created the Supreme Court without defining or limiting its jurisdiction, it must have been considered as possessing all the jurisdiction which the constitution assigns to it. The Legislature would have exercised the power it possessed of creating a Supreme Court as ordained by the constitution, and, in omitting to exercise the right of excepting from its constitutional powers, would have necessarily left those powers undiminished. *The appellate powers of this Court are not given by the judicial act. They are given by the constitution.* But they are limited and regulated by the judicial act, and by such other acts as may have been passed on the subject."

So also in the case of The U. S. *v.* Hudson (7 Cranch, 32), this Court used the following language:

> "Of all the courts which the United States may, under their general powers, constitute, one only, the Supreme Court, possesses jurisdiction derived immediately from the constitution, and *of which the legislative power cannot deprive it.*"

U. S. *v.* Hudson, 7 Cranch, 32.
See U. S. *v.* Coolidge, 1 Wheat., 415.
Smith *v.* Jackson, 1 Paine, C.C.R., 455.

If, then, the appellate jurisdiction which this Court has is derived from the constitution, we submit that the only power which the Congress has, under the exceptive clause, is to say that certain cases shall be excepted from this appellate jurisdiction, and that it has not the power in any way to control the jurisdiction which the Court is to exercise in cases which are not excepted.

The power of this Court, *in the cases which come before it*, is derived from the constitution and cannot be limited by statute. And when the constitution provided that this Court should have "appellate jurisdiction both as to law and fact" in

admiralty and maritime causes, Congress has no power to say that such appellate jurisdiction shall be confined to either law or fact in the cases in which the appellate jurisdiction is exercised.

Having excepted certain admiralty and maritime causes from those in which this Court shall exercise its appellate jurisdiction, the power of the Congress is exhausted. It cannot go further and say how such appellate jurisdiction shall be exercised in cases not excepted. This is for the Court to say. And the Court must say, of course, that the appellate jurisdiction, which the constitution intended to give to the Supreme Court in admiralty and maritime causes, is the appellate jurisdiction of the admiralty, not that of the common law.

6. The power of "exception" and "regulation" of the appellate jurisdiction of this Court, given to the legislative branch of the government, is one, the exercise of which should be carefully scrutinized.

The founders of our government established the three departments of power, separating the one from the other. Of these three, says Hamilton, the judiciary is "beyond comparison, the weakest;" and he adds, "all possible care is requisite to enable it to defend itself against the attacks" of the other departments; (Federalist Ed. of 1864, p. 576,) and Madison, (id., p. 382-3-4), points out the dangers to the country arising from the growth of the legislative power, and says "It is against the enterprising ambition of this department, that the people ought to indulge all their jealousy, and exhaust all their precautions."

It follows from these considerations that any act of the Legislative power, whose direct purpose and object is to curtail the power of the judiciary, is one which should be closely scrutinized, and carefully and jealously construed.

Now the construction of this statute, which

holds that Congress has by it taken away from this Court its appellate jurisdiction in admiralty causes, seems to involve a concession of power to the Legislative Department which is fraught with great danger.

If Congress has the power to deprive the Supreme Court of that "appellate jurisdiction both as to law and fact," which is inherent to an appeal in admiralty and maritime causes, what is to prevent Congress, if it shall see fit, from depriving this Court of that jurisdiction in equity cases, or patent cases, or prize cases?

If Congress has the power to say that the Supreme Court, in the exercise of its constitutional appellate power, shall not consider questions of fact, in cases where the consideration of questions of fact is essential to an appellate jurisdiction, why has it not equally the power to say that the Court shall not consider questions of law, in other cases in which the consideration of questions of *law* is essential to the exercise of the appellate jurisdiction?

We can see no difference in principle between the two powers. And it seems to us that this court should be very slow to yield to Congress, in quiet times, a power which might so easily, in time of emergency or public excitement, be so exerted as to endanger the peace and prosperity of the country.

If it is within the power of Congress, in the face of this constitutional grant of appellate power to the Supreme Court, to take away from the Court the jurisdiction of questions of fact in admiralty causes, which Judge Story says it was the object of the provision to retain, what is there to prevent Congress from taking away from the Supreme Court the jurisdiction to consider questions of law in all other cases?

The consideration of questions of law, on a writ of error in a common law cause, is no more essential to the review of the case by the Ap-

pellate Court than is the consideration of *all* the questions *both of law and of fact* to the review of an admiralty cause by the Appellate Court on an appeal

If hostility of Congress to the Supreme Court could be supposed, it might also be supposed that Congress might pass a law that the Supreme Court should not have power to review questions of law on writs of error in common law causes.

If such a law were proposed, and the question of power were raised, and it was said that in this case of The Francis Wright the Supreme Court had decided that Congress had the power to take from the Supreme Court the power and the right to review questions of fact in *admiralty* causes, and that that power of Congress necessarily involved the power to take from the court the power and the right to review questions of law *in other causes*, what answer could be given? What reason is there which forms a ground of distinction between the two limitations on the constitutional power of this Court?

7. We are aware that the view which we present, if it be maintained, will continue upon this Court, already too heavily burdened, something of an additional load of labor. But this consideration, as it seems to us, is by no means sufficient to call upon the Court to allow itself to be stripped of so important a prerogative. The crown is too valuable to be laid down because it is burdensome to wear.

8. And we further submit that such a construction of the Act of 1875 is not a necessary, nor even a logical construction. There is no such necessary connection between the requirement in the first part of the section, that the Circuit Court shall find facts and conclusions of law, and the rest of the section, as to make the closing sentence of the section necessarily applicable to all

cases of appeal. The natural construction, on the contrary, would be to limit the last sentence to the cases in which by consent of parties, questions at issue had been submitted to the verdict of a jury. That would be only saying that if parties consent to dispose of their cases by the verdict of a jury instead of according to the course of the Admiralty, the subsequent proceedings to review the judgments shall be conformed to the proceedings in other causes which are tried before juries. That would be a "regulation" of the appellate jurisdiction which might very well be made. And we submit that as between such a construction of the statute of 1875, and one which takes away from suitors in the Admiralty a right which was given to them by the constitution, and which has been exercised continually from the date of the constitution until now, there can be no question that the latter construction should be rejected and the former construction should prevail.

So held by this Court in The U. S. *v.* Combs, 12 Pet., 72.

"For as a conflict between the Statute and the Constitution is not to be implied, it would seem to follow, where the meaning of the Constitution is clear, that the Court, if possible, must give the Statute such a construction as will enable it to have effect."

Cooley on Const. Lim., p. 184.

9.—We have not overlooked the decision of this Court in the case of Wiscart *v.* Dauchy (3 Dall., 321).

It is to be noted that at that time, owing to what seems to have been an oversight in the passage of the Judiciary Act of 1789, the only means provided for obtaining the exercise of the appellate jurisdiction of this Court in any case was a writ of error.

The question which was before the Court in Wis-

cart *v.* Dauchy was, whether, where a statement of facts accompanied a writ of error, such statement of facts would be held conclusive. And the Court very properly held that it would be held conclusive.

But the question whether under the constitution the party aggrieved had a right to an *appeal* was not presented or considered.

The right to invoke the appellate jurisdiction of this Court in admiralty and maritime causes, "*both as to law and fact*," is, as we claim, given to the suitor by the constitution. The only way in which that right can be exercised by him who claims it, is by an *appeal*. If, having the right to an appeal, he takes a writ of error, he can only invoke the jurisdiction which this Court can exercise in cases brought up by writs of error. But if he has taken an appeal, and then brought his whole case before this Court, the jurisdiction which this Court must exercise over it depends upon the constitution alone. It does not depend upon any statute, nor can it be limited by any statute. Just so in reference to the question of the jurisdiction of the Admiralty Courts over the Great Lakes, this Court held that that jurisdiction was derived not from the Act of 1845 but from the words of the constitution.

And our claim, that this provision of the constitution gives to the suitor this right to have his whole case, both on the law and the fact, presented to this Court by his appeal, is made all the clearer and stronger by the fact that this claim rests not only on the general words of the clause, but also on the special words "both as to law and fact," unanimously inserted in the clause of the constitution then under consideration by the makers of the constitution, and inserted, as Judge Story says, with the express object of retaining in this Court this very jurisdiction, which we claim a right in these suitors to invoke in this case.

We submit, therefore, that the case of Wiscart

v. Dauchy is no authority against us ; nor is the case of The United States *v.* King (7 How., 845), which also only decided as to the effect of a writ of error, and called especial attention to the difference between an appeal and a writ of error. That case was a case at law in which a party had a right to a trial by jury and waived it, and then took a writ of error not an appeal.

We confidently submit that no case can be found which holds that the right to invoke the appellate jurisdiction of this Court *by appeal* is not a right given by the constitution to those who have admiralty and maritime cases. Nor is there any case which holds that this constitutional right to an *appeal* in such cases does not carry with it the right to a review of the whole case both as to law and fact.

To sum up our position in brief, we claim that under the constitution, while Congress has the power to *except certain admiralty cases* from the appellate jurisdiction of this court, it has not the power to limit the appellate jurisdiction both as to law and fact, which this Court must exercise *in those admiralty cases of which the Court does have jurisdiction.*

Second.

If this Court should conclude that our claim of the right to have the whole case considered by it is a constitutional one, then we beg leave to present the following considertions upon the questions of fact involved in the cause.

A

Under the charter, the owners of the steamer covenanted to keep her "tight, staunch and well fitted, tackled, and provided with every requisite for such a voyage." (Fol. 9.)

The charterers were neither to make nor to pay for any repairs that became necessary.

It was a necessity for the owners, therefore, to have on board of the vessel, at all times, agents through whom they might keep this covenant. This was provided for by their reserving the right to nominate the engineer, and to approve of the captain.

1. To insure the subserviency of the engineer to their interests, the owners paid him $50 a month over and above what the charterers paid him. (Fol. 173.)

2. The letters of the master to Woodhouse & Rudd, put in evidence by the respondents, show that all parties understood that in this matter of repairs he and Sherman were agents, ~~the~~ not/ of the charterers, but of the owners of the ship (Record, fols. 197, 198, 199, 205).

   And the letters of Woodhouse & Rudd warrant the same conclusion (Record, fols. 207, 208).

B.

This covenant was not kept. The boiler was not kept tight and staunch.

1. The simple facts, that during the voyage from New York to Philadelphia, the boiler broke down once (fols. 27, 56, 159); that during the fourteen days voyage from Philadelphia to Galveston, it broke down five times (fols. 57, 75, 79, 159, 160); that during the time she lay at Galveston first it broke down once (fol. 160); and four hours after she started from Galveston, twenty-six tubes gave out (fols. 32, 59, 61, 160); and that during the sixteen days of her passage home, it broke down six times (fols. 62, 83, 166, 167, 168); that it started from Philadelphia with five tubes plugged up (fols. 145, 150) and returned, after having expanded forty

at Galveston (fol. 163), with twenty-six plugged up (fols. 85, 98)—these facts of themselves are enough to demonstrate that the boiler was never "staunch," although it may have been sometimes tight.

A steamer with such a boiler cannot be held to be "tight, staunch, well fitted, tackled and appareled for such a voyage."

2. The evidence of Hartly (fol. 97), and of Shaw (fols. 99, 105, 171), and of Dalton (fol. 105) is abundant, if any evidence were required outside the facts above stated, to show that this boiler was not in a fit condition for this voyage.

Nor is that evidence overborne by the evidence of Stratton, (pp. 77 to 83); Parry, (pp. 83 to 85); Phillipps, (pp. 85 to 87), and Belknap, (pp. 89 to 97). These gentlemen speak from what they judged of the boiler at the time they saw it. They do not seem to have been informed of the history of the boiler, nor was any question put to them which contained in it the facts of its frequent breakages.

Their evidence is, not that a boiler, which acts as this boiler acted, is tight and staunch, but only that they thought this boiler would not act as it did.

3. There is not even any evidence offered by the respondents that this weak condition of the boiler could not have been discovered in advance. The proof is, that it should have been anticipated (Hartley, 86; Belknap, 604).

And there are not wanting indications that the action of the boiler was in some degree anticipated.

Such are the refusal of Sherman to allow an examination of the boiler, (fol. 203), and the supplying the vessel with a half a barrel of plugs for stopping tubes, (fol. 315.)

4. But owners of a ship are liable for such a failure to keep their covenant in any event.

These owners did not covenant that the ship should be kept *apparently* tight and staunch, &c. They covenanted that she should *be kept* tight, staunch, &c.

If she was not, their covenant is broken.

Christie *v.* Trott, 25 Eng. L. & Eq., 262.
The Vivid. 4 Ben., 319.
Putnam *v.* Lord, 3 Mass., 481.
Warren *v.* Story, 33 Eng. Law & Eq., 400.
Backhouse *v.* Sneed, 1 Murphy, 173.
The Thos. Jefferson 3 Ben., 302.

5. It is to be noticed that the District Court, on the evidence before it, found that the boiler was not seaworthy when the vessel left Galveston the first time, and that the repairs which had been put upon it were not thorough; and the respondents, although they examined in the Circuit Court both Sherman and his two assistants, asked them nothing as to the thoroughness of the repairs or the condition of the boiler at that time.

6. There was also a breach of this covenant by the ship, in that no extra boiler tubes were put on board to supply the place of any that might give out, (fol. 338), and in that there was no tube-expander on board, the absence of which alone caused the vessel to put back to Galveston. (Fols. 161, 162, 194.)

Both of these articles were necessary in order that the ship should be "provided with every requisite" for the voyage.

C.

Owing to this unseaworthiness of the boiler, and the lack of the tube-expander and of the extra tubes, the vessel was delayed from the time she left Galveston the first time till she reached Philadelphia.

1. She was delayed from 4:30 P. M. on the 31st of October, till noon on the 7th of November, a delay of six days and nineteen hours.

   She was stopped for repairs seven hours on November 18th, and five hours on November 21st.

   This alone, counting as nothing the delays which must have been caused by the leaking of the boiler on November 10th, 13th, 16th and 22d, and on other days, on which occasions the engine does not seem to have been absolutely stopped, makes a delay of seven days and seven hours.

   She reached Philadelphia on November 23d, at 10:30 A. M.

   Without this delay, then, she would have reached that place, all other things being equal, at 3:30 A. M. on the 16th of November, or about twelve hours after the time when she actually left Key West.

2. But she should have reached Philadelphia several days earlier than that.

   There was no stoppage of the vessel on the homeward voyage from stress of weather, but she was hove to for that cause for twenty hours, (Denison, fol. 36); while on the outward passage, she lost from that cause thirty-six hours. (Denison's Letter, fol. 198.)

   The voyage home should have been two or three days shorter than the voyage out, owing to the Gulf Stream. (Lockhart, fol. 308.) It was lengthened one day by her putting into Key West.

   She made the outward voyage in fourteen days (Denison's Letter, fol. 198), and she was more heavily loaded, drawing nearly two feet more water than on the homeward voyage. (Sherman's Log.)

   She should have made the homeward voyage then at least in thirteen days, which would

have brought her to Philadelphia on the 12th of November, instead of the 23d.

This additional delay is clearly to be accounted for by the constant entries in Sherman's log, that the boiler was "steaming hard," "leaking bad," &c., &c. With so large a portion of it entirely unserviceable, and the rest so interfered with by leaks, the vessel could not make even the poor rate of speed which she made on the outward voyage.

D.

The spoiling of the beef was due to this delay.

The District Court held that the libellants had not established this fact; but that either the beef might have been spoiled before the vessel reached Key West, or it might have spoiled afterwards from lack of ice, or from inability of the apparatus to prevent its spoiling.

1. The beef was not spoiled when the vessel was at Key West, nor till after November 18th.

   (*a.*) Mr. Zane's evidence on this point is positive, and he was entirely competent, both from previous experience and from the examination which he made of the beef, to testify as to this point.
   (Zane, fols. 114, 241, 257.)

   (*b.*) Zane is supported on this point by Denison, the captain (fol. 37), Lockhart, the second mate (fols. 304, 305, 311); and Conners, the steward (fol. 319); and by Surgeon Perry (fols. 259, 262).

   (*c.*) At Key West some of this beef was sent to the Russell House, some to the U. S. Frigate Canandaigua, and some to Mr. Tifft, a merchant, and to others. Mr.

Tifft, Mr. Baldwin, and Mr. Brown testify to the good condition of that which was sent to Mr. Tifft. Mr. Collins, an employee at the Russell House, and Mr. Rawson and Mr. Parker, boarders there, give the same evidence as to what went to the Russell House; and Mr. Gregory and Surgeon Perry, U. S. N., give similar evidence as to that which they saw.

Surgeon Perry, at the captain's request, personally inspected a large part of the cargo (fols. 259, 261).

All of these gentlemen ate of this beef and found it good.

See their depositions:

Perry, fol. 259.
Tifft, fol. 264.
Baldwin, fol. 268.
Brown, fol. 270.
Collins, fol. 272.
Rawson, fol. 273.
Parker, fol. 276.
Gregory, fol. 278.

(*d.*) The beef was on the table of the ship every day till after she left Key West, and was eaten without complaint.

Denison, fol. 37.
Lockhart, fol. 304.
Conners, fol. 319.

(*e.*) Opposed to this is the evidence of Sherman, Hoffman, Goetchius, and Reeder, supported by Russell.

As to Russell, he admits he put the meat on his table, says he did not eat of it himself, but asked Rawson to give his judgment about it.

Rawson's judgment, given under oath, is that it was good.

Sherman, although swearing that the meat was spoiled, admits that it was put on the

table for one meal after the ship left Key West. And he undertakes to pass off his saying it was good as a joke. And when the ship arrived at Philadelphia, and he was asked what had been the difficulty, he only charged the fault to the boiler, not to the beef. (Fol. 323.)

Hoffman, too, admits that the beef was on the table all the way to Key West, and is not positive whether it was on the table after leaving Key West or not. (Fol. 398.)

And Goetchius also does not remember on this point.

Reeder's evidence is destroyed by the proof that he not only never told any one connected with the case, on the trial of which, in the District Court, he attended as a witness, one word of what he now says about the bad condition of the beef at Key West; but he is proved to have said that it was good, and that the leaking of the boiler was the sole cause of the loss of the cargo.

Duncan, fol. 334.

(*f.*) The facts remain uncontradicted, whatever judgment these men undertake to give now as to the condition of the beef, that it was put on the officers' table every day till after the vessel left Key West, and that it was given as a present at Key West to the Russell House, to the U. S. frigate Canandaigua, and to Mr. Tifft.

If it could be credited that the officers of this vessel allowed tainted meat to be continually put on their table, it certainly cannot be credited that they should make presents of tainted meat to three parties at Key West, and that eight gentlemen, in no way connected with the libel lants in this suit, should come forward to swear that this tainted meat was good.

g.) Mr. Zane's evidence, and his memoranda made at the time, showing the continued effort to preserve the beef, are the best evidence, and they show that the beef was not spoiled till November 19th.

2. The destruction of the beef was not due to any failure to purchase more ice at Key West.

(*a.*) The refrigeration of the beef was not due to the presence of any amount of ice in the ice-house, but to the ice in the *ice-box*. As long as that ice-box was full the quantity in the ice-house was a matter of indifference. (Zane, fol 243.)

Now, up to the time of the spoiling of the beef, the ice-box was kept three-quarters full, and there was still remaining about eight tons of ice in the ice-house. (Id., fol. 243.)

(*b.*) This demonstrates that the purchase of more ice at Pensacola would not have saved the beef.

(*c.*) They left Key West with thirty-seven tons of ice in the ice-house, besides the six tons in the ice-box. This, as Zane says, was as much as he left Key West with on the Firefly, in August, and he reasonably supposed that that quantity would be sufficient in the cooler season of November. (Id., 241.)

3. The destruction of the beef was not due to "an inability in the apparatus to prevent its spoiling."

(*a.*) No apparatus could be expected to prevent beef from spoiling forever.

(*b.*) This apparatus did preserve the beef from October 31st, when the vessel first sailed, till November 18th, at least.

The vessel should have been in Philadelphia at least five or six days before that.

Her delay was the cause of the destruction, not the inability of the apparatus to preserve the beef for an indefinite period farther.

E.

As to the charge made by Sherman and his associates that the beef was spoiled when it was loaded at Galveston, there are several answers.

1. The Court must look with great suspicion upon such a charge appearing for the first time at so late a stage in the case.

   It is inconceivable that these respondents, if they believed any such story at the time of the trial in the District Court, would not have alleged it and given evidence of it. Their failure to do so shows either that they had not heard of the charge, or that the charge did not then commend itself to them as a valid one.

2. The Court would require such a charge to be sustained by men of more reliability than these witnesses show themselves to be.

   Officers of a ship who are willing to swear that they have detained the vessel by *shamming work* (fol. 184–5), and then have falsified their log in reference to the matter, would hardly be believed, if contradicted, as to other matters.

   Witnesses brought forward at so late a day to tell a story, which is the opposite of what they said at the first, must expect to have their first story believed.

3. The facts utterly confute this idea. There were present when the beef was put aboard, Zane,

whose business depended upon the successful bringing of this cargo of beef to Philadelphia in good condition, and who would be zealous for the success of the enterprise, and for his own reputation; Wilson, interested pecuniarily in the result; Capt. Denison, also largely interested in the enterprise; and Reeder, who went out in hopes of working into a business if this voyage proved a success.

If it could be believed that the three engineers, Sherman, Hoffman, and Goetchius, had so little interest in the matter, and so little brains, as to assist in stowing beef that was *already tainted* and fly-blown, in the hope of delivering it *fresh* in Philadelphia, certainly no one can believe that Zane, Wilson, Denison and Reeder were so insane as that.

And the positive denial by Zane and Wilson of the whole story is far more worthy of credit than any evidence that is to be fonnd on the other side.

The foundation of the whole story seems to have been the rejection of some beef by Zane, the story of which will be found in Wilson's deposition, fols. 292-3.

F.

There was no doubt an additional cause which hastened the destruction of the beef, in the extra heat communicated to the bottom of the refrigerated room by hot water from the boiler running down into the bilge of the ship.

a. There can be no doubt that the hot water from the boiler did run into the ship's bilge. (Lockhart, fols. 307, 311).

So Sherman admits (fol. 730).

b. Now, besides the leaking of the boiler on Nov. 10, 14, 17, 18, 22 and 23, which water must have

run into the bilge, it is to be noticed that on two of those occasions, viz., on the 14th and 18th the water was let out of the boiler for the sake of repairs. (Sherman's log.)

c. The claimants furnish no evidence to show that this hot water could not have affected the floor of the refrigerated room. It is plain that it must have affected it. Such a fact would account for the fact, otherwise totally inexplicable, that the temperature of the refrigerated room was found, on one occasion, to be highest at the floor. This was on the 18th (Zane, fol. 242); and on that day after the boiler had been leaking hard for two days, the engine was stopped, and the water let out of the boiler in order to repair it. (Sherman's log., fol. 167). So, also, on November 13, when Zane entered in his memorandum book "something wrong" (fol. 257), noticing something about the temperature that he could not account for, we find by Sherman's log that there was a "tube leaking hard" in the boiler (fol. 166).

d. This fact alone is sufficient to show that the Court below erred in not finding that hot water raised the temperature of the refrigerated room and melted the ice.

e. The entries in Sherman's log about the bilges being dry all the time (fol. 188) are plainly afterthoughts, written in by him after he had seen the charge in the newspaper that the loss of the cargo was due in part or in whole to the hot water from the leaks.

Not any entry of that kind was made on the voyage out; and when Sherman was asked to explain this, he gave the excuse that the ship was down by the head on the voyage out (fol. 187), which excuse was false. (See his letter fol. 364). He admits himself that he made one false entry in his log (181).

G.

It being entirely incredible that this beef was spoiled when put on board; it being proved that it was good when the vessel was at Key West and for three days after, and it being also proved that the vessel should, but for the delays caused by the leakiness of the boiler, have reached Philadelphia while the beef still remained in good condition, which leakiness was a failure on the part of the owners of the steamer to fulfil the covenants of the charter, it follows that the loss of this cargo was the result of that failure on their part.

The Thos. Jefferson, 3 Ben 302.
Horne *v.* Midland Railway Co., Law Rep., 8 C. P., 135.
Sampson *v.* The London and N. W. Railway Co., Law Rep. 1 Q. B., 274.
Ward *v.* The New York Central R. R., 47 N Y., 29.
Sedgwick on Damages, 6th Edit., p. 430, Note 3.

And for the damages occasioned by this breach of covenant the vessel should be held liable.

Third.

But if this Court, on the other hand, should determine that we have no constitutional right to an "appeal" in this case (using the word "appeal" in the fuil sense, of a new hearing both of the law and the fact), and that the Act of 1875 is valid in its provisions, and that under it these libellants and appellants can only bring before this Court for review the "questions of law arising on the record" and the "rulings of the Circuit Court excepted to at the time" which appear in the Bill of Exceptions, then we have the following considerations to present:

1. The finding of a fact by the Circuit Judge, which has no evidence to sustain it, is an error of law,

and it is an error of law which "appears upon the record."

Meacham v. Burke, 54 N. Y., 219.

This is so declared in New York by a subsequent Statute.

Code of N. Y. of 1877, sec. 993 and 1023.

2. The refusal of a Circuit Judge to find a fact, which is proved without contradictory evidence, if such fact is material to the questions of law involved in the case, is also an error of law appearing on the record.

Smith v. The Glen's Falls Ins. Co., 62 N. Y., 85.

82 " , 456.

3. The refusal of a Circuit Judge to find in reference to a fact as to which the evidence is conflicting, if the fact is material, is also an error of law appearing on the record.

4. Such refusals are in contravention of the fair meaning of the statute.

The statute requires that the Circuit Court "shall find the facts and the conclusions of law on which it bases its judgments or decrees."

There can be no fair meaning to this except that it shall find all material facts. The Circuit Court has not the power to find certain facts and to refuse to find other facts which are equally material and equally in the case presented to it. A refusal on the part of the Circuit Court to find such other facts would be an error of law correctable in this Court.

5. Now, that is what the Circuit Court has done in this case.

It has found certain facts, but has refused to find certain other undisputed facts.

The Circuit Judge has found that the Francis Wright occupied two more days than is usually occupied by well equipped steamers in her

voyage from Galveston to Philadelphia. He has also found that she put back for repairs, by which a week's time was lost at Galveston. He has also found that a number of the tubes of her boiler from time to time gave out and were plugged up.

He refused to find the specific facts in relation to the boiler, requested by the libellants.

As to these findings there was no dispute of evidence.

If these facts were material, the refusal of the Circuit Judge to find them was an error of law.

76 N.Y., 390

6. But these facts were material. They showed that the engine of this steamer was in such a condition that she was not seaworthy—she was not tight and stanch, as the owners had agreed in the charter that she should be kept (fol. 9)

The rule as to seaworthiness of vessel, as stated by Arnould on Ins. (vol. I, p. 689), is the rule to which we appeal.

> "Where a ship becomes so leaky or disabled as to be unable to proceed on her voyage, soon after sailing on it, and this cannot be ascribed to any violent storm or extraordinary peril of the seas, the fair and natural presumption is that it arose from causes existing before her setting out on her voyage, and consequently that she was not seaworthy when she sailed."

> "The law will intend a want of seaworthyness, because no visible or rational cause, other than a latent or inherent defect in the vessel can be assigned for the loss."

Patrick v. Hallett, 3 Johns. Cas., 76 and note.

The facts as to this steamship bring the case within this rule of law.

Within a few hours after she left Galveston 26 tubes out of the 144 tubes of her boiler were found to be leaking.

And the boiler had, on seven different occasions before, met with similar disaster, though not to so great an extent.

And on her return to Galveston, forty of the tubes were expanded by a tube expander, which the vessel did not have on board, but which had to be made for the purpose (fol. 194). And the return to Galveston was entered in the log as necessary, on account of not having the proper tools on board (fol 161).

7. Now we insist that on these facts, the vessel was not tight and staunch as covenanted by the charter, and that the twelfth finding of the Circuit Judge was without evidence to sustain it.

(*a.*) That finding is to be taken as a finding that the vessel was "kept tight and staunch, well fitted and tackled, and provided with every requisite for the voyage"—during *the whole* voyage.

(*b.*) A steamer with a boiler which gives out so often, cannot be staunch. Especially, is it conclusive proof of her not being staunch, that within five hours after her sailing from port, such a material defect should declare itself without any extraneous cause.

Indeed the District Judge, on these facts, held that the vessel was not seaworthy (Record, fols. 227, 228).

These facts being found, the conclusion that the boiler was not seaworthy must follow as a matter of law, and as a matter of law it must follow that the owners of the steamer had not kept the covenants of the charter.

8. Nor is this view of the case to be met by the suggestion that the Circuit Judge has found the twelfth finding as a finding of fact, and that the matter, therefore, cannot be examined.

The finding in question is a finding of law, not of fact, and cannot be changed in its character by calling it a "finding of fact." See language of Judge Harris in Van Schaick *v.* Winne (16 Barb., 95), and especially of Judge Duer in Lawrence *v.* Wright (2 Duer, 674).

9. The Circuit Judge erred in the first conclusion of law.

He had found in his second finding of fact that the owner of the steamer, before the charter was entered into, had notice of the object of the voyage. (See also the Fourth Finding).

Now we submit that the authorities are clear, that, where an article is either bought or hired with notice that it is intended for a specific use, that use enters into the contract.

And the party is allowed to prove the giving of such notice, because that then becomes one of the surrounding circumstances in the light of which the contract itself is to be construed.

So it is said in Sedgwick on Damages, (vol. 1, p. 59,) "If the building had been let for carrying on a particular business then the injury (to the business from eviction) which otherwise would be too remote, becomes direct and immediate, and constitutes a valid claim, *as forming part of the contract between the parties.*

The Circuit Judge therefore erred in the conclusion to which he came, as to the duty imposed upon the claimants in reference to this special use of the steamer. They knew that she was designed to bring this cargo of fresh beef. They must be deemed to have known that time was essential and that delays were dangerous; and their covenant in the charter should therefore be held to be that, so far as the condition of the vessel was concerned she should be kept so as not to expose the libellants *by reason of her condition* to the loss which they have suffered.

10. The Circuit Judge erred in the third conclusion of law.

The facts on which we base this claim of error are these, which are all to be found in the findings and opinion of the Circuit Judge.

The cargo was all on board at Galveston on the 29th of October. The steamer reached Key West on the 14th of November, and Philadelphia on the 23d, nine days after leaving Key West.

She was detained a week by putting back for repairs at Galveston, and she occupied two days longer on the voyage than is usual for well equipped steamers. There was therefore a loss of nine days.

She made the voyage from Key West to Philadelphia in nine days; and the beef was still good till she was three days out from Key West.

It follows inevitably that, if it had not been for the nine days delay, the cargo would have been in Philadelphia three days before it spoiled.

We submit that the spoiling of the beef *before it reached Philadelphia* was the natural result of those delays.

We concede, of course, that the libellants cannot ask of these owners anything that may not reasonably be supposed to have entered into the minds of the parties. But we insist that this is just what would have entered into them.

The charterers might have said to the owners: "We want a vessel to bring a cargo of fresh beef from Galveston. Our apparatus, which we will put on board, will keep it sweet for twenty-five days."

The owners might have said: "The Francis Wright will do for you; she will go nine miles an hour."

The charterers might well have replied that that would do, if she made it; and the owners

might have replied, "We will keep her tight, stanch, and well fitted in every respect for the voyage, but we cannot insure against the sea. That may delay her a much longer time."

And if the charterers had said: "We will take the risk of that. All we ask is that, if there are no perils of the sea, your vessel will be kept tight and stanch," and thereupon a contract to that effect had been signed, could any one say that said contract was not reasonable on both sides?

The Circuit Court therefore erred in finding the third conclusion of law.

We insist that this loss of the beef is shown to have been the result of the nine days' delay on the voyage. But for that delay the ship would have reached Philadelphia when she actually reached Key West.

There is no finding that the delay was caused by any peril of the sea. And we insist that in the absence of such finding—in the absence of any cause whatever to make the repairs necessary, the presumption is, as a matter of law, that the vessel was not in a good and seaworthy condition.

And if she was not so, and the delay was caused by such unseaworthy condition, then we submit that the loss of the cargo is shown to have been the direct result of the breach of that covenant of seaworthiness.

And furthermore, we say that, if the libellants have shown a breach of the covenant of seaworthiness, the question of the damages resulting therefrom is to be determined by a reference.

The question of damages in admiralty causes is not determined by the Court in the first instance, but by a reference. Such is the universal practice.

If the libellants had shown a breach of the charter, (and such a breach we insist had been shown,) they should have had a decree in their

favor for such damages as on a reference they could have shown. Their libel is not to be dismissed because they did not show such damages to the Court on the trial.

And herein was a great error, not only on the part of the Circuit Court, but also of the District Court. The charter party being shown to have been broken, the libellants should have had a decree for such damages as they could show on a reference had for that purpose.

11.—The fourth conclusion of law was also erroneous.

The libellants did not incur "*all the risks* incident to the making of the experiment." There was a risk that the vessel should not be tight and staunch and seaworthy. This risk belonged to the owners of the vessel, and this risk they took upon themselves by the charter party. This risk, therefore, the libellants did not incur.

It is true that the libellants "had the sole use and disposal of the vessel *under the charter*," *i. e.*, they had it so far as the charter gave it to them. But by the charter the libellants had nothing whatever to do with the keeping of the vessel in good repair. The owners of the vessel covenanted in the very first clause of the charter that the vessel "shall *be kept* tight, staunch, well fitted, tackled and provided,"—"kept" by whom? By no one but the owners.

And the owners had their agents on board—the master and the engineer were their agents—for the purpose of keeping this covenant. As the agents of the owners they were to make whatever repairs were necessary in order to the performance of this first covenant of the owners of the vessel, and the owners were to pay for whatever repairs they made.

Any risk, therefore, of the non-performance of that covenant by those agents of the own-

ers of the vessels belongs to the owners of the vessel to bear and not to the libellants.

12.—The fifth conclusion of law is also an error.

If a defective construction and working of the refrigerating apparatus *caused* the damage to the cargo, it might well be that the owners of the vessel could not be made liable therefor.

But if such defective construction and working only *contributed* to the damage, it cannot be said that therefore the owners of the vessel cannot be made liable. If that were the case, and if a breach of the covenant to keep the vessel tight and stanch *also contributed* to cause the damage, the owners would be held liable for the damage in part.

Snow *v.* Carruth, 1 Sprague, p. 324.

13.—And in conclusion we submit that if this Court shall conclude that it is limited to a review of the questions of law alone, then the cause is to be sent back to the Circuit Court for a new trial.

For here are manifest errors committed by the Circuit Court.

(*a.*) There are errors in refusing to find undisputed facts, which, if they had been found, would have materially changed the case to which the principles of law are to be applied.

(*b.*) There are manifest errors of law in the conclusions of law which that Court adopted. How are we to know to what conclusion upon the whole case the Court would have come, if in place of these erroneous conclusions had been substituted right conclusions?

Certainly, if this had been a trial by jury, and the Court had charged the jury in accordance with the conclusions of law which were

here adopted, the verdict of the jury must have been set aside and a new trial ordered.

It seems to us that justice between these parties requires a similar result in the present situation of the case, and that the decree of the Circuit Court should be reversed and a new trial ordered.

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